**UNITED
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**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/1995/41
13 December 1994

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-first session
Item 10 of the provisional agenda

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Note by the Secretary-General

1. In its resolution 1994/36 of 26 August 1994, the Sub-Commission on Prevention of Discrimination and Protection of Minorities requested Mr. Leandro Despouy, Special Rapporteur on human rights and states of emergency, to submit to the Commission on Human Rights at its fifty-first session an updated list of States which, since 1 January 1985, have proclaimed, extended or terminated a state of emergency, so that the Commission would have before it the latest and most comprehensive information possible on the past 10 years.

2. In pursuance of this resolution, the Secretary-General is transmitting to the Commission on Human Rights the updated version of the seventh annual report and list of States prepared by the Special Rapporteur (E/CN.4/Sub.2/1994/23 and Corr.1 and Add.1).

UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/CN.4/1995/42
22 November 1994

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fiftieth session
Agenda item 11 (a) of the
provisional agenda

FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION

ALTERNATIVE APPROACHES AND WAYS AND MEANS WITHIN THE UNITED NATIONS SYSTEM FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Preliminary report submitted by the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, in accordance with Commission on Human Rights resolution 1994/45

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Introduction

1. At its fiftieth session on 4 March 1994, the Commission on Human Rights adopted resolution 1994/45, entitled "The question of integrating the rights of women into the human rights mechanism of the United Nations and the elimination of violence against women", in which it decided to appoint, for a three-year-period, a special rapporteur on violence against women, including its causes and consequences.

2. In the same resolution, the Commission on Human Rights invited the Special Rapporteur, in carrying out that mandate, and within the framework of the Universal Declaration of Human Rights and all other international human rights instruments, including the Convention on the Elimination of All Forms of Discrimination against Women and the Declaration on the Elimination of Violence against Women, to:

(a) Seek and receive information on violence against women, its causes and consequences from Governments, treaty bodies, specialized agencies, other special rapporteurs responsible for various human rights questions and intergovernmental and non-governmental organizations, including women's organizations, and to respond effectively to such information;

(b) Recommend measures, ways and means, at the national, regional and international levels, to eliminate violence against women and its causes, and to remedy its consequences;

(c) Work closely with other special rapporteurs, special representatives, working groups and independent experts of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities and with the treaty bodies, taking into account the Commission's request that they regularly and systematically include in their reports available information on human rights violations affecting women, and cooperate closely with the Commission on the Status of Women in the discharge of its functions.

3. Pursuant to paragraph 8 of the above-mentioned resolution, the Chairman of the fiftieth session of the Commission on Human Rights, after consultation with the members of the Bureau, appointed Ms. Radhika Coomaraswamy (Sri Lanka) as Special Rapporteur on violence against women, its causes and consequences.

4. By its decision 1994/254 of 22 July 1994, the Economic and Social Council endorsed Commission on Human Rights resolution 1994/45.

5. In that resolution the Commission also called for the elimination of gender-based violence in the family, within the general community and where perpetrated or condoned by the State. It also emphasized the duty of Governments to take appropriate and effective action concerning acts of violence against women, whether those acts are perpetrated by the State or by private persons.

6. Furthermore, in accordance with paragraph 10 of the same resolution, the Special Rapporteur was mandated to carry out field missions, either separately or jointly, with other special rapporteurs and working groups, as well as to

consult periodically with the Committee on the Elimination of Discrimination against Women. In addition, the Commission requested the Secretary-General to ensure that the reports of the Special Rapporteur were brought to the attention of the Commission on the Status of Women to assist in the Commission's work in the area of violence against women.

I. MANDATE AND WORKING METHODS OF THE SPECIAL RAPPORTEUR

A. General

7. The different forms of violence against women include, as spelled out in the above resolution, all violations of the human rights of women in situations of armed conflict, and in particular, murder, systematic rape, sexual slavery and forced pregnancy, as well as all forms of sexual harassment, exploitation and trafficking in women, the elimination of gender bias in the administration of justice and the eradication of the harmful effects of certain traditional or customary practices, cultural prejudice and religious extremism.

8. The Special Rapporteur has understood her mandate to contain two components. The first consists of setting out the elements of the problem before her, the international legal standards and a general survey of incidents and issues as they relate to the many problem areas. The second component consists of identifying and investigating factual situations, as well as allegations which may be forwarded to the Special Rapporteur by concerned parties.

9. With regard to the second component, the Special Rapporteur deems it useful to take a more specific approach by endeavouring to identify more precisely situations of violence against women. For this purpose the Special Rapporteur, in a spirit of dialogue, will approach concerned Governments and request clarifications on allegations regarding violence against women that she may have received. This method of direct dialogue with Governments is consistent with the approach of the Commission on Human Rights, which invited the Special Rapporteur "to seek and receive information on violence against women, its causes and consequences, from Governments" and further requested "all Governments to cooperate with and assist the Special Rapporteur in the performance of the tasks and duties mandated and to furnish all information requested".

10. Taking into consideration the alarming situation of violence against women throughout the world, the Special Rapporteur intends to establish dialogue with Governments concerning allegations and prospective field missions with a view to assisting the Governments concerned to find durable solutions for the elimination of violence against women in their societies.

11. In addition to inquiring into specific allegations and in accordance with paragraph 10 of resolution 1994/45, the Special Rapporteur is planning to undertake a number of field missions in connection with her first and second reports, to be submitted in 1996 and 1997, respectively. These field visits will cover all geopolitical regions. In particular, the Special Rapporteur envisages visiting the Asian, African and Eastern European regions in 1995, and the Latin American, Western European and other and Asian regions in 1996.

12. On 29 July 1994, the Secretary-General sent a note verbale to Governments transmitting the Special Rapporteur's request, with reference to paragraph 7 (a) of resolution 1994/45, for relevant information and contributions in order to assist her in her work.

13. Information and materials were requested in the areas of:

(a) Violence in the family (including domestic violence, traditional practices, infanticide, incest, etc.);

(b) Violence in the community (including rape, sexual assault, sexual harassment, commercialized violence such as trafficking in women, prostitution, labour exploitation, pornography, women migrant workers, etc.);

(c) Violence by the State (including violence against women in detention and custodial violence, as well as violence against women in situations of armed conflict and against refugee women).

14. In particular, the Special Rapporteur expressed her interest in receiving, with respect to any of the above issues, information on national legislation, relevant court cases, training programmes for judges and lawyers, police practice and training procedures, special policies and institutions concerned with women victims of violence, as well as statistical data. Governments were also asked to submit information on national plans of action with regard to violence against women, referred to in article 4 (e) of the Declaration on the Elimination of Violence against Women (General Assembly resolution 48/104).

15. At the time of submission of the present report, replies had been received from Angola, Argentina, Burkina Faso, Brunei Darussalam, China, Cyprus, Denmark, Ecuador, Finland, Germany, Iraq, Kuwait, Luxembourg, Malta, Mauritania, Mexico, New Zealand, Peru, the Philippines, San Marino, Slovenia, St. Vincent and the Grenadines, Switzerland, the Syrian Arab Republic, Turkey, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Yugoslavia.

16. Requests for information on violence against women, its causes and consequences, were also addressed to treaty bodies, other special rapporteurs responsible for various human rights questions, specialized agencies, United Nations bodies and organs, and intergovernmental and non-governmental organizations, including women's organizations.

17. The Special Rapporteur received responses from the Division for the Advancement of Women, the Crime Prevention and Criminal Justice Branch of the United Nations Office at Vienna, the Economic and Social Commission for Asia and the Pacific, the Economic Commission for Latin America and the Caribbean, the Office of the United Nations High Commissioner for Refugees, the International Court of Justice, the United Nations Research Institute for Social Development, the United Nations African Institute for the Prevention of Crime and the Treatment of Offenders, the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization and the World Health Organization, as well as from

the United Nations Development Programme offices in Burundi, El Salvador, the Gambia, Guatemala, Guyana, India, the Libyan Arab Jamahiriya, Madagascar, Pakistan, Panama, Peru, Senegal, the Sudan, Turkey, the United Republic of Tanzania and Venezuela.

18. Replies were also received from the Conference on Security and Cooperation in Europe, the Commonwealth Secretariat, the Council of Europe, the Inter-American Court of Human Rights, the Inter-Parliamentary Union, the International Organization for Migration and Interpol, as well as the following non-governmental organizations: Amnesty International, Baha'i International Community, Coalition Against Trafficking in Women, Education International, Human Rights Watch/Women's Rights Project, Inter-African Committee on Traditional Practices, International Federation of Business and Professional Women, International Fellowship of Reconciliation, International Institute of Humanitarian Law, Medical Women's International Association, Socialist Women International, World Education Fellowship.

19. The Special Rapporteur will use the information received mainly in her second and third reports when she will be reporting on specific issues in greater detail.

B. The United Nations system and initiatives against violence against women

20. The issue of violence against women has only recently found its place on the international human rights agenda. In the 1970s, women's issues were generally related to problems of political and economic discrimination and to equitable participation in the development process by women of the third world. The major international legal instrument concerned with women's rights *per se*, the 1979 Convention on the Elimination of All Forms of Discrimination against Women, concentrated on "discrimination". The issue of gender-based violence is not specifically addressed in the Convention although it is clearly fundamental to its provisions.

21. At the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace, held at Nairobi in July 1985, the issue of violence against women was once again only raised as an afterthought to issues of discrimination, health and economic and social issues.

22. Paragraph 258 of the Nairobi Forward-Looking Strategies for the Advancement of Women, adopted by the World Conference, states:

> "Violence against women exists in various forms in everyday life in all societies. Women are beaten, mutilated, burned, sexually abused and raped. Such violence is a major obstacle to the achievement of peace and the other objectives of the Decade and should be given special attention. Women victims of violence should be given particular attention and comprehensive assistance. To this end, legal measures should be

> formulated to prevent violence and to assist women victims. National machinery should be established in order to deal with the question of violence against women within the family and society. Preventive policies should be elaborated, and institutionalized forms of assistance to women victims provided."

23. In 1986, an expert group meeting on violence in the family with special emphasis on its effects on women was organized under the auspices of the Division for the Advancement of Women.

24. The issue of violence against women was taken up by the Economic and Social Council in recommendations and conclusions arising from the first review and appraisal of the implementation of the Nairobi Forward-looking Strategies, annexed to its resolution 1990/15 of 24 May 1990, in which it recognized that:

> "Violence against women in the family and society is pervasive and cuts across lines of income, class and culture must be matched by urgent and effective steps to eliminate its incidence. Violence against women derives from their unequal status in society."

Consequently, Governments were called upon to take immediate measures to establish appropriate penalties for, as well as reduce the impact of, violence against women in the family, the work place and society (recommendation XXII).

25. In the same year, at the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, it was stated that violence against women was seen as a result of the power imbalance between women and men, and that violence sustained that imbalance.

26. In March 1991, the Commission on the Status of Women, at its thirty-fifth session, in draft resolution II, recommended to the Economic and Social Council for adoption that a framework for an international instrument be developed in consultation with the Committee for the Elimination of Discrimination against Women that would address explicitly the issue of violence against women.

27. Subsequently, the Economic and Social Council, upon the recommendation of the Commission on the Status of Women, adopted resolution 1991/18 of 30 May 1991, entitled "Violence against women in all its forms", in which inter alia it urged Member States to adopt, strengthen and enforce legislation prohibiting violence against women and to take all appropriate administrative, social and educational measures to protect women from all forms of physical and mental violence; and, more importantly, recommended the development of a framework for an international instrument that would explicitly address the issue.

28. As a result, in November 1991, another expert meeting on violence against women was convened at Vienna, under the auspices of the Division for the Advancement of Women. The Expert Group recommended, inter alia, the improvement of reporting by States on violence against women to the Committee

on the Elimination of Discrimination against Women (CEDAW), and the appointment of a special thematic rapporteur on violence against women, as well as preparing a draft United Nations declaration on violence against women, to be submitted to the Commission on the Status of Women and to CEDAW.

29. In 1992, CEDAW, at its eleventh session, took the important step of formally including under gender-based discrimination gender-based violence

> "that is violence which is directed against a woman because she is a woman or which affects women disproportionately. It includes acts which inflict physical, mental or sexual harm or suffering, threats such as acts, coercion, and other deprivation of liberty. Gender-based violence may breach specific provisions of the Convention, regardless whether those provisions expressly mention violence."

States parties were, therefore, requested to take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act" (General recommendation 19, entitled "Violence against women", 1992).

30. In 1993, the Commission on the Status of Women had before it at its thirty-seventh session a draft declaration on violence against women, as contained in a report of the Secretary-General (E/CN.6/1993/12), and subsequently decided to convene an inter-sessional working group, which met in September 1992, to develop further the draft declaration on violence against women.

31. Also in 1993, upon the recommendation of the Commission on the Status of Women, the Economic and Social Council, in its resolution 1993/10 of 27 July 1993, urged the General Assembly to adopt the draft declaration on the elimination of violence against women, and in resolution 1993/26 also of 27 July 1993, entitled "Violence against women in all its forms", urged Governments to give their full support to its adoption.

32. The process of anchoring the issue of violence against women firmly on the international agenda culminated in the adoption, without a vote, by the General Assembly at its forty-eighth session, of resolution 48/104 on 20 December 1993, in which it proclaimed the Declaration on the Elimination of Violence Against Women.

33. This Declaration is the first international human rights instrument to deal exclusively with violence against women. It affirms that violence against women both violates and impairs or nullifies the enjoyment by women of human rights and fundamental freedoms and is concerned about the long-standing failure to protect and promote those rights and freedoms in relation to violence against women. For the first time also, a clear and comprehensive definition of violence against women has been attempted in article 1 of the Declaration (see chap. II).

34. Also in 1993, a parallel process advocating the elimination of violence against women emerged in other human rights mechanisms of the United Nations. The Commission on Human Rights, at its forty-ninth session, in its

resolution 1993/46 of 8 March 1993, condemned all acts of violence and violations of human rights directed specifically against women and decided to consider the appointment of a special rapporteur on violence against women at its fiftieth session.

35. Similarly, the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights, held at Vienna in June 1993, contains important provisions in the field of the human rights of women. Part I, paragraph 18, reads as follows:

> "The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community.
>
> "Gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated. This can be achieved by legal measures and through national action and international cooperation in such fields as economic and social development, education, safe maternity and health care, and social support.
>
> "The human rights of women should form an integral part of the United Nations human rights activities, including the promotion of all human rights instruments relating to women.
>
> "The World Conference on Human Rights urges Governments, institutions, intergovernmental and non-governmental organizations to intensify their efforts for the protection and promotion of human rights of women and the girl-child."

36. It is further stated, in Part II, paragraph 37 of the Vienna Declaration and Programme of Action, that:

> "The equal status of women and the human rights of women should be integrated into the mainstream of United Nations system-wide activity. These issues should be regularly and systematically addressed throughout relevant United Nations bodies and mechanisms. In particular, steps should be taken to increase cooperation and promote further integration of objectives and goals between the Commission on the Status of Women, the Commission on Human Rights, the Committee on the Elimination of Discrimination against Women, the United Nations Development Fund for Women, the United Nations Development Programme and other United Nations agencies. In this context, cooperation and coordination should be strengthened between the Centre for Human Rights and the Division for the Advancement of Women."

37. In particular, in Part II, paragraph 38 of the Vienna Declaration and Programme of Action:

> "The World Conference on Human Rights stresses the importance of working towards the elimination of violence against women in public and private life, the elimination of all forms of sexual harassment, exploitation and trafficking in women, the elimination of gender bias in the administration of justice and the eradication of any conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism. The World Conference calls upon the General Assembly to adopt the draft declaration on violence against women and urges States to combat violence against women in accordance with its provisions. Violations of the human rights of women in situations of armed conflict are violations of the fundamental principles of international human rights and humanitarian law. All violations of this kind, including in particular murder, systematic rape, sexual slavery, and forced pregnancy, require a particularly effective response."

38. With regard to the effective integration of the human rights of women into United Nations activities, Part II, paragraph 40, states:

> "Treaty monitoring bodies should disseminate necessary information to enable women to make more effective use of existing implementation procedures in their pursuit of full and equal enjoyment of human rights and non-discrimination. New procedures should also be adopted to strengthen implementation of the commitment to women's equality and the human rights of women. The Commission on the Status of Women and the Committee on the Elimination of Discrimination against Women should quickly examine the possibility of introducing the right of petition through the preparation of an optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women. The World Conference on Human Rights welcomes the decision of the Commission on Human Rights to consider the appointment of a special rapporteur on violence against women at its fiftieth session."

39. At its fiftieth session, the Commission on Human Rights, in its resolution 1994/45 of 4 March 1994, decided to appoint a special rapporteur on violence against women, including its causes and consequences.

40. As part of the preparatory process for the Fourth World Conference on Women, to be held in Beijing in 1995, a draft platform of action is being elaborated. In Section II.C of this draft platform, as approved by the Commission on the Status of Women, at its thirty-eighth session, in its resolution 38/10, violence against women is recognized as a global problem, taking various forms in both public and private life, which constitutes a violation of basic human rights, instilling fear and insecurity in women's lives.

41. Lastly, on 9 June 1994 the General Assembly of the Organization of American States adopted the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (the "Convention of Belém do Pará").

42. It is evident that the human rights of women, and more specifically their integration into the mainstream of United Nations activities in the field of human rights, is gaining increasing political attention on the international human rights agenda. The appointment of a special rapporteur on violence against women by the Commission on Human Rights should be seen as one important step in this direction, as well as the culmination of joint efforts of active and interested Governments, non-governmental organizations and women's groups worldwide.

43. With regard to the integration of the human rights of women into the mainstream of United Nations human rights activities, and in accordance with paragraphs 10, 11 and 12 of Commission resolution 1994/45 and paragraph (b) of Economic and Social Council decision 1994/254, the Special Rapporteur has been closely following the preparatory process for the Fourth World Conference on Women, to be held in Beijing in September 1995. In this connection, the Special Rapporteur has met with representatives of the secretariat for the World Conference at the Division for the Advancement of Women and participated at the Arab Regional Preparatory Meeting for the World Conference on Women, held at Amman from 6 to 10 November 1994.

44. In addition, the Special Rapporteur will meet with the members of the Committee on the Elimination of Discrimination against Women at its fourteenth session, in January 1995, and is planning to attend the thirty-ninth session of the Commission on the Status of Women, in March 1995.

45. On the basis of the above, as well as in an attempt to give full justice to the complexity of the issue, the Special Rapporteur has prepared this preliminary report in which she recalls the terms of her mandate, her interpretation of these terms and the working methods in the introduction. Chapter I focuses on the nature of the problem and the specific causes and consequences of violence against women. Chapter II outlines the relevant international legal standards and human rights instruments applicable to violence against women. Chapter III addresses the general issues concerning the problems arising from such violence in the family, the community and where perpetrated or condoned by the State. Finally, in chapter V the Special Rapporteur submits conclusions and preliminary recommendations based on her analysis of the information available at the time of the finalization of the present report. 1/

II. THE NATURE OF THE PROBLEM - CAUSES AND CONSEQUENCES OF VIOLENCE AGAINST WOMEN

A. General

46. The human rights tradition privileges a certain type of human personality - an individual endowed with rights, guided by reason and empowered with dignity. Since the Universal Declaration of Human Rights, this has been the vision which has sustained many of the political, economic and social experiments of the modern world. In recent times it has provided the firm foundation for the development of democracy, justice and equality in many societies.

47. Violence against human beings has been one of the major factors which has prevented the realization of human rights goals in the twentieth century. War, repression, and the brutalization of public and private life have destroyed the possibility of human rights being enjoyed as a universal phenomenon. Violence against women, in particular, has inhibited women as a group from enjoying the full benefits of human rights. Women have been vulnerable to acts of violence in the family, in the community and by States. The recorded incidents of such violence have reached such unprecedented proportions that they have shocked the conscience of the world. As a result, the international community has decided to take concerted action against incidents of violence against women as part of the general campaign for human rights. 2/

48. Women are vulnerable to violence because of their female sexuality (resulting in, inter alia, rape and female genital mutilation); because they are related to a man (domestic violence, dowry deaths, sati) or because they belong to a social group, where violence against women becomes a means of humiliation directed at the group (rape in times of armed conflict or ethnic strife). Women are subject to violence in the family (battering, sexual abuse of female children, dowry related violence, incest, deprivation of food, marital rape, female genital mutilation), to violence in the community (rape, sexual abuse, sexual harassment, trafficking in women, forced prostitution) and violence by the State (women in detention and rape during times of armed conflict).

B. Historically unequal power relations

49. As is stated in the Preamble to the United Nations Declaration on the Elimination of Violence against Women, violence against women is a manifestation of historically unequal power relations between men and women. Violence is part of a historical process and is not natural or born of biological determinism. The system of male dominance has historical roots and its functions and manifestations change over time. 3/ The oppression of women is therefore a question of politics, requiring an analysis of the institutions of the State and society, the conditioning and socialization of individuals, and the nature of economic and social exploitation. The use of force against women is only one aspect of this phenomenon, which relies on intimidation and fear to subordinate women.

50. Women are subject to certain universal forms of abuse such as rape and domestic violence. In addition, certain cultural forms are specific to regions and countries. These include female genital mutilation, virginity tests, bride burning or the binding of the feet of female children. It is argued that any attempt to universalize women's experience is to conceal other forms of oppression such as those based on race, class or nationality. This reservation must be noted and acknowledged. And yet it must be accepted that there are patterns of patriarchal domination which are universal, though this domination takes a number of different forms as a result of particular and different historical experiences. 4/

51. If the roots of female subordination lie in historical power relations within society, then the institutions of State and civil society must accept responsibility for female subordination, including violence against women.

The State bears a primary responsibility not only to refrain from encouraging acts of violence against women but actively to intervene in preventing such acts from taking place. State institutions such as prisons and detention centres are often the sites of violence against women. Rape is often used as an instrument of torture. State inaction in situations of violence against women is one of the major factors that allows such violence to continue.

52. In fact, in modern times, the State has become an arena of conflict: on the one hand, it may act according to legislation and practices which are against women's interests; but on the other hand, the State may emerge as the major instrument in transforming certain legislative, administrative and judicial practices which empower women to vindicate their rights. The negligence of the State may be the cause of increased violence against women, while the active intervention of the State may actually be the catalyst for reforming power relations within society. 5/

53. Among the historical power relations responsible for violence against women are the economic and social forces which exploit female labour and the female body. Economically disadvantaged women are more vulnerable to sexual harassment, trafficking and sexual slavery. They are also employed as bonded labour and low-paid labour in many economic enterprises throughout the world. As migrant workers, they often face innumerable hardships in foreign countries. 6/ Economic exploitation is an important aspect of modern female labour. In addition, a study of 90 societies in relation to wife beating found that economic equality was a key factor which prevented violence against women. 7/ Denying women economic power and economic independence is a major cause of violence against women because it prolongs their vulnerability and dependence. Unless economic relations in a society are more equitable towards women, the problem of violence against women will continue. 8/

54. The institution of the family is also an arena where historical power relations are often played out. On the one hand, the family can be the source of positive nurturing and caring values where individuals bond through mutual respect and love. On the other hand, it can be a social institution where labour is exploited, where male sexual power is violently expressed and where a certain type of socialization disempowers women. Female sexual identity is often created by the family environment. The negative images of the self which often inhibit women from realizing their full potential may be linked to familial expectation. The family is, therefore, the source of positive humane values, yet in some instances it is the site for violence against women and a socialization process which may result in justifying violence against women. 9/

55. Modern technology may also be a factor impinging on the question of violence against women. "Ecofeminists" have continuously pointed out that modern technology has resulted in the destruction of the lifestyle of rural women in many parts of the globe. 10/ Others have pointed to the growth of sweat shops and similar sites for the economic exploitation of female labour spawned by modern technology and its needs. Economic systems which value profits often do so at the expense of female labour. This is particularly true of production processes involved in free trade zones and home-based

production. Since female labour is devalued in these sectors, they often become sites for violence against women. Rape and sexual harassment of these workers remain an important social problem in many developing societies. 11/

56. The area which is particularly relevant to the problem of violence against women in the context of technology is the issue of reproductive technology. Though reproductive technology has allowed women greater freedom and greater choice with regard to the important function of childbirth, it has also created innumerable health problems for women, problems which are often ignored by the medical establishment. These health problems have resulted in female deaths which in other circumstances might have been avoided. Women's access to adequate health care becomes a crucial factor in this regard. In addition, reproductive technology which allows for preselection of the sex of the child has resulted in the killing of female foetuses and selective abortion. The practice of surrogate motherhood which has developed recently has also resulted in the exploitation of the bodies of women from the third world. Modern technology has been the means of liberation and choice for many women, but for others it has resulted in death and exploitation. 12/

57. In the context of the historical power relations between men and women, women must also confront the problem that men control the knowledge systems of the world. Whether it be in the field of science, culture, religion or language, men control the accompanying discourse. Women have been excluded from the enterprise of creating symbolic systems or interpreting historical experience. 13/ It is this lack of control over knowledge systems which allows them not only to be victims of violence, but to be part of a discourse which often legitimizes or trivializes violence against women. The ability to minimize women's experience of violence ensures that no remedial action is taken by either States or individuals. Part of the campaign to eliminate violence against women must be to challenge the systems of knowledge and the discourse of individuals which trivialize women's experience of violence. 14/ Women are also denied access to knowledge because they are refused education in many parts of the world. The right to female education must therefore be the first step towards articulating a more sensitive history of violence against women.

C. Sexuality

58. In addition to historical power relations, the causes of violence against women are also closely linked to the question of female sexuality. Violence is often used as an instrument to control female sexual behaviour. It is for this reason that violence against women often finds sexual expression. Rape, sexual harassment, trafficking, female genital mutilation, all involve forms of violence which are an assault on female sexuality. 15/

59. The control of female sexual behaviour is an important aspect of many law codes. 16/ The purpose of this control is to ensure chastity so as to make certain that the children of a woman are born to the correct father. This control also ensures that property will not be inherited by those who are not of the same lineage. This desire to ensure chastity may take different forms.

Female genital mutilation is perhaps its most extreme manifestation. This form of violence against women curtails female sexual expression so that women will remain chaste and faithful to their husbands.

60. In many traditions, concepts of honour are linked to a woman's sexuality. Violence against women is often justified by the argument that that honour has been violated by a woman's sexual behaviour. 17/ Such concepts of honour also find collective expression in many societies. In this context, violence against women who are seen as being the property of the males in a rival social group becomes a means of defiling the honour of that social group. Female sexuality has been a battleground in feudal and in modern vendettas where male prestige and honour are challenged.

61. If attitudes towards female sexuality are often the cause of violence against women, it becomes important for society to "protect" its women from the violence of "the other". This protection often entails restrictions being placed on women, whether in the form of dress codes or the freedom of movement. It also implies that women who respect these rules are protected, but that those who assert equality and independence are more vulnerable to violence. Women who challenge the codes of dress and the restrictions on movement are often targets of male violence.

62. Many authors who have analysed the subordination of women argue that fear of rape and male sexual assault remains the most important aspect of life for women in all societies. 18/ Attitudes toward female sexuality are seen as primary factors responsible for violence against women. These attitudes not only condition the behaviour of men and women in society, but often end up justifying violence against women. Themes such as the vindication of honour, concepts of family shame and the need for protecting "proper" women while punishing others are some of the factors which have conditioned male attitudes towards female sexuality and the use of violence against women.

D. Cultural ideology

63. Besides history and sexuality, the prevalence of ideologies which justify the subordinate position of women is another cause of violence directed against women. In many ideologies a traditional legitimacy is given to using violence against women in certain instances. In both the developed and the developing world, there have been cultural sanctions in the past for husbands chastising or beating their wives in certain circumstances. These sanctions have been included in law codes in different cultural heritages. 19/

64. The ideologies which justify the use of violence against women base their discussion on a particular construction of sexual identity. The construction of masculinity often requires that manhood be equated with the ability to exert power over others, especially through the use of force. Masculinity gives man power to control the lives of those around him, especially women. The construction of femininity in these ideologies often requires women to be passive and submissive, to accept violence as part of a woman's estate. Such ideologies also link a woman's identity and self-esteem to her relationship to her father, husband or son. An independent woman is often denied expression in feminine terms. In addition, standards of beauty, defined by women, often require women to mutilate themselves or damage their health, whether with

regard to foot binding, anorexia nervosa and bulimia. 20/ It is important to reinvent creatively these categories of masculinity and femininity, devoid of the use of force and ensuring the full development of human potential. 21/

65. Article 4 of the Declaration on the Elimination of Violence against Women states clearly that "States should condemn violence against women and should not invoke custom, tradition or religious consideration to avoid their obligations with respect to its elimination". 22/ Unfortunately international experience points to a different reality. Custom, tradition and religion are frequently invoked to justify the use of violence against women. They form an ideological framework which is resistant to change and transformation.

66. It is universally accepted that the spirit of all the world's religions is dedicated to equality, including equality between the sexes. Though interpretations may vary, there is no question that all the world's religions are committed to the pursuit of equality and human rights. However, certain man-made practices performed in the name of religion not only denigrate individual religions but violate internationally accepted norms of human rights, including women's rights. Recent religious movements, often termed "fundamentalist", have sought to clothe these discriminatory practices with religious sanctity. In most societies there is an ongoing dialogue between women interested in women's rights and those who are close to religious traditions. It is the concern of the international community that this dialogue results in the elimination of man-made practices which violate human rights and the spirit of equality contained in the world's religions. This question should be high on the list of priorities. Religious considerations should never be used to justify the use of violence against women. 23/

67. Certain customary practices and some aspects of tradition are often the cause of violence against women. Besides female genital mutilation, a whole host of practices violate female dignity. Foot binding, male preference, early marriage, virginity tests, dowry deaths, sati, female infanticide and malnutrition are among the many practices which violate a woman's human rights. Blind adherence to these practices and State inaction with regard to these customs and traditions have made possible large-scale violence against women. States are enacting new laws and regulations with regard to the development of a modern economy and modern technology and to developing practices which suit a modern democracy, yet it seems that in the area of women's rights change is slow to be accepted.

68. Not all customs and traditions are unprotective of women's rights. There are certain traditions and customary practices in all parts of the world which actually promote and defend women's rights and women's dignity. However, those customs and traditions which involve violence against women must be challenged and eliminated as violating the basic tenants of international human rights law. 24/

69. Elements of the national and international media may also be blamed for causing attitudes which give rise to violence against women. The media sometimes reproduce negative stereotypes of women. More importantly, by often glamourizing the culture of violence they allow for the widespread acceptance

of violence as a means of resolving conflict in society or in the home. Pornography is perhaps the extreme manifestation of media violence against women. Although this question involves important issues concerning the right to freedom of expression, the portrayal of violence against women in pornographic literature and film, where women are shown bound, battered, tortured, humiliated and degraded, is a major problem for those confronting violence against women in their societies. Pornography is both a symptom and a cause of violence against women. Pornography in itself violates female dignity but, in addition, it often promotes attitudes and practices which result in violence being directed against women. 25/

E. Doctrines of privacy

70. Doctrines of privacy and the concept of the sanctity of the family are other causes for violence against women to persist in society. In the past, the State and the law intervened with regard to violence in the home only when violence became a public nuisance. Otherwise, the doctrine of privacy allowed for violence to continue unabated. The public/private distinction, which has been at the root of most legal systems, including human rights law, has created major problems for the vindication of women's rights. However, in recent times the approach to law has changed. States are increasingly reaching into the privacy of the home. In developing countries the regulation of reproductive rights has become an important concern. States are now increasingly being held responsible for human rights offences committed within the home. States are required, by standards of due diligence, to prevent as well as punish crimes of violence which take place in the private domain. 26/

F. Patterns of conflict resolution

71. Patterns of conflict resolution within a given society are often responsible for violence being directed against women. The study of wife battery, as mentioned above, points to this aspect as being the second most important factor when it comes to wife abuse in different societies. 27/ Studies in the mid-twentieth century have also concluded that militarization leads to greater abuse with regard to women. 28/ Levels of repression and militarization may, therefore, be directly related to the increase of incidents of violence against women. Rape as an instrument of war is perhaps the greatest manifestation of this phenomenon. Societies which socialize individuals to resolve conflicts non-violently are less likely to entertain problems of violence against women than societies where violence is an important part of the conflict resolution process.

G. Government inaction

72. Perhaps the greatest cause of violence against women is government inaction with regard to crimes of violence against women. There appears to be a permissive attitude, a tolerance of perpetrators of violence against women, especially when this violence is expressed in the home. The seriousness of the crime is rarely acknowledged. There exists also a non-recognition of such crimes in the laws of many countries, especially in relation to domestic violence, marital rape, sexual harassment and violence associated with traditional practices. As a result, in most societies crimes of violence

against women are invisible. In addition, even where crimes of violence against women are recognized in the law, they are rarely prosecuted with vigour. In the context of norms recently established by the international community, a State that does not act against crimes of violence against women is as guilty as the perpetrators. States are under a positive duty to prevent, investigate and punish crimes associated with violence against women. 29/

H. Consequences

73. The consequences of violence directed against women are difficult to ascertain because the crimes are often invisible and there is very little data on the subject. However, it is very clear that fear is perhaps the greatest consequence. Fear of violence prevents many women from living independent lives. Fear curtails their movement, so that women in many parts of the world do not venture out alone. Fear requires that they dress in a manner that is "unprovocative" so that no-one can say that "they asked for it" if they are violently assaulted. Fear of violence requires that they seek out male protection to prevent violence being directed at them. This protection can result in a situation of vulnerability and dependence which is not conducive to women's empowerment. Women's potential remains unrealized and energies which could be directed towards the amelioration of society are often stifled.

74. In certain cultural contexts, especially those in which female genital mutilation is practised, a woman is denied her existence as a sexual being with needs and expectations. This denial of female sexuality through the mutilation of the body has to be seen as a violation of a fundamental human right.

75. Women who are at the receiving end of violence have serious health problems. In recent times, studies have been conducted on the harmful physical and emotional impact of violence against women, such as on the harmful effects of female genital mutilation on the health of women. Other forms of abuse also result in physical injury to the body of the victim. In addition there are psychological effects. Abused women are subject to depression and personality disorders. They manifest high levels of anxiety and somatic disorders. These psychological effects have a negative effect on the women as they paralyse them and inhibit their self-determination. What is termed the "traumatic syndrome of abused women" includes lack of volitional autonomy, fear, anguish, depression and in some cases suicide. 30/

76. Violence in the family, in particular, has serious consequences for both women and children. Children often show signs of post-trauma stress and have behavioural and emotional disorders. In addition, a Canadian study shows that males coming from homes where there is spousal abuse are 1,000 per cent more likely to beat their own wives than those who come from families where there is no such abuse. 31/ The consequence of tolerating violence in the first instance is to perpetuate a cycle of violence in the family and in society.

77. In terms of development, violence prevents women from participating fully in the life of the family and the community and in society. Energies which might be directed towards social good and development are curtailed. Women's

potential and their contribution towards development and growth is an important aspect of the development process. Violence against women prevents women as well as society from realizing their full potential. 32/

78. The cost to society in terms of violence against women is phenomenal. Much of the cost is hidden since statistics on this issue are rare. But the United States, for example, spent US$ 27.6 million on refugee accommodation for victims of violence in 1987 alone. 33/ This does not take into account the medical, legal and other expenses associated with these projects. There are similar statistics for other countries which have set up accommodation for victims of violence. 34/ The material cost of the consequences of violence is superseded by the more intangible costs relating to the quality of life, the suppression of human rights and the denial of women's potential to participate fully in their society.

III. INTERNATIONAL LEGAL STANDARDS

A. Protection from violence

79. Women have been invisible in the development and growth of modern international law. Though law is assumed to be gender-neutral, the norms and standards of international law are generally unconcerned with the "women's" question. 35/ In recent times this approach has changed, especially in the field of international human rights law. The problems associated with gender inequality and violence against women have gained increasing recognition by the international community. There is a concerted effort to eradicate violence against women as part of a worldwide campaign on women's human rights.

80. Many international legal instruments dealing with human rights include the protection of women from violence in their provisions. The Universal Declaration of Human Rights, in article 1, states that "all human beings are born free and equal in dignity and rights". Article 2 provides that "everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Article 3 of the Universal Declaration provides that "everyone has the right to life, liberty and security of person". Article 5 provides that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". The non-discrimination clause, taken together with articles 3 and 5, means that any form of violence against women which can be construed as a threat to her life, liberty or security of person or which constitutes torture or cruel, inhuman or degrading treatment is not in keeping with the Universal Declaration and is therefore a violation of the international obligations of Member States.

81. Other instruments, such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, likewise prohibit violence against women. Article 2 of the

International Covenant on Civil and Political Rights contains a non-discrimination clause similar to that contained in article 2 of the Universal Declaration. In addition, article 26 of the Covenant argues:

> "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as ... sex".

This, taken in conjunction with article 6.1 of the Covenant, which protects the right to life, article 7, which protects everyone from torture or cruel, inhuman or degrading treatment or punishment, and article 9.1, which protects the right to liberty and security of person, means that the Covenant may be construed as covering the issue of gender-based violence.

82. Article 3 of the International Covenant on Economic, Social, and Cultural Rights guarantees the equal right of men and women to the enjoyment of all rights set forth in that Covenant and many of the substantive rights set out in the Covenant cannot be enjoyed by women if gender-based violence is widespread. For example, article 7 of the International Covenant on Economic and Social Rights ensures the right of everyone to the enjoyment of just and favourable conditions of work. This, by implication, entails that women must be free of violence and harassment at the workplace.

83. In times of war, the Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949 (the Fourth Geneva Convention), states clearly in its article 27 that "Women shall be especially protected against any attack on their honour in particular against rape, enforced prostitution or any form of indecent assault". This section is echoed in common article 3 of the Geneva Conventions and in Protocol II to the Geneva Conventions.

84. The most extensive instrument dealing exclusively with the rights of women, however, is the Convention on the Elimination of All Forms of Discrimination against Women, which came into force in September 1981. Although this instrument does not explicitly deal with violence against women, except in the areas of trafficking and prostitution (art. 6), many of the anti-discrimination clauses contained in it provide for the protection of women from violence. Additionally, many of the recent recommendations of the monitoring body of the Convention, the Committee for the Elimination of Discrimination Against Women (CEDAW), especially General recommendation No. 19, have addressed the issue of gender-based violence and provide the sole source of legally binding material at the international level dealing expressly with violence against women.

85. The Convention on the Elimination of All Forms of Discrimination against Women is perhaps best described as an international bill of rights for women as it sets out in detail both what is to be regarded as discrimination against women and the measures that have to be taken in order to eliminate this discrimination. Women's rights are conceptualized as human rights and a

"non-discrimination" model is adopted, so that women's rights are seen to be violated if women are denied the same rights as men. Article 1 of the Convention defines discrimination against women as

> "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field".

Violence is not expressly mentioned but a proper interpretation of the definition allows it to be included by implication.

86. Furthermore, CEDAW has on various occasions recommended that the issue of violence against women be included in the reports submitted to it by the State Parties. In General recommendation 12, adopted in 1989, the Committee requested that States include in their reports information about violence against women and the measures taken to eliminate such violence.

87. General recommendation No. 19, 36/ formulated in 1992, deals entirely with violence against women and explicitly states that gender-based violence is a form of discrimination which seriously inhibits a woman's ability to enjoy rights and freedoms on a basis of equality with men and asks that State parties have regard to this when reviewing their laws and policies. The recommendation further states that when reporting under the Convention States parties should take this into consideration. It also argues that the definition of "discrimination" in article 1 of the Convention includes gender-based violence, which is in turn defined in recommendation 19 as "violence directed against a woman because she is a woman or which affects women disproportionately. It includes physical, mental, or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty".

88. General recommendation 19 also deals with specific articles of the Convention and how they relate to violence against women. The specific areas discussed are (i) traditional attitudes, customs and practices (arts. 2 (f), 5 and 10 (c)), (ii) all forms of traffic and exploitation of prostitution of women (art. 6), (iii) violence and equality in employment (art. 11), (iv) violence and health (art. 12), (v) rural women (art. 14) and (vi) family violence (art. 16).

89. General recommendation 19 argues that certain traditions and customs and practices whereby women are regarded as subordinate or as having stereotyped roles perpetuate various practices, including violence and coercion, and that such prejudices and beliefs may be used to justify gender-based violence as a form of protection or control of women, as a result of which women are deprived of the equal enjoyment of their human rights and fundamental freedoms.

90. With regard to prostitution, and traditional as well as new forms of trafficking, the recommendation states that these activities put women at special risk of violence and abuse. States parties are directed to take special preventative and punitive steps against such violence.

91. On the question of employment, General recommendation 19 states that gender-specific violence such as sexual harassment in the workplace can seriously impair equality in employment. With regard to health issues, States are directed to provide a support service for all victims of gender-based violence, including refuge, specially trained health workers, rehabilitation and counselling services.

92. The General recommendation also recognizes that rural women are at special risk of violence because of the persistence of traditional attitudes in many rural communities and it imposes an obligation on States to ensure that services for victims of violence are accessible to rural women. Where necessary, special services should be provided for isolated communities.

93. Violence in the family is seen to be widespread and present in every part of the world and measures necessary to eradicate family violence are listed.

94. General recommendation 19 also directs State parties, in their reports, to describe the extent of each problem in their countries, the measures taken to prevent and punish the occurrence of such problems, and the effectiveness of such measures.

95. The Declaration on the Elimination of Violence against Women deals exclusively with violence against women. The document is a comprehensive statement of international standards with regard to the protection of women from violence. Although the Declaration is not legally binding, it sets out international norms which States have recognized as being fundamental in the struggle to eliminate all forms of violence against women.

96. This Declaration is the first real set of international standards to deal specifically with the problem of violence against women. For the purposes of the Declaration, violence against women is defined in article 1 as

> "any act of gender-based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of sucn acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life".

97. The Preamble to the Declaration clearly locates the roots of gender-based violence in "historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women", recognizing that "violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men". The Preamble also identifies groups of women who are especially vulnerable to violence. These include women belonging to minority groups, refugee women, migrant women, women living in rural or remote communities, destitute women, women in detention, female children, women with disabilities, elderly women and women in situations of armed conflict. Vulnerability and historicity are thus seen as the dual principles which are responsible for violence against women.

98. Violence against women is defined in the Declaration as including, but not being limited to, physical, sexual and psychological violence that occurs in the family. Such violence includes battering, sexual abuse of female

children in the household, dowry related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation. The Declaration also points to the prevalence of violence in the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutes and elsewhere, trafficking in women and forced prostitution. Finally it recognizes violence which is either perpetrated or condoned by the State. The definition of violence contained in the Declaration appears, therefore, to be a broad one whereby violence is not strictly construed as meaning only the actual use of physical force, but implies the right to inquire against all forms of action which disempower women because of the fear of violence, whether the fear is instilled by the State, actors in the community or members of the family.

B. State responsibility

99. The problem of violence against women brings into sharp focus an issue that has been troubling the international community - State responsibility for the actions of private citizens. In the past, a strict judicial interpretation had made the State responsible only for actions for which it or its agents are directly accountable. In this case it would relate to issues such as women in custody and women in detention and perhaps the problem of women during armed conflict. The question of domestic violence, rape and sexual harassment, etc., were seen as the actions of individuals and thus beyond the "human rights" responsibility of the State.

100. It is a recognized part of general international human rights law that States are responsible for (i) the protection of the rights of individuals to exercise their human rights, (ii) investigation of alleged violations of human rights, (iii) punishment of the violators of human rights, (iv) provision of effective remedies for the victims of human rights violations. Yet States are rarely held responsible for ignoring their obligations with regard to women's rights. 37/ The reason for this is twofold. States do not consider women's rights as human rights, especially those rights which are exercised in the home or the community, and they do not see such violations as an "internationally recognized justiciable wrong". Secondly, States do not consider themselves responsible for violations of women's rights by private actors.

101. The earlier sections of this chapter clearly show that women's rights have become an integral part of international human rights law and that violence against women is a violation of human rights for which States are accountable. States therefore have an international obligation with regard to the protection of these rights as part of the general regime of international human rights law.

102. Except for categories such as "pirates" and "international war criminals", private individuals and agencies are not generally bound by international human rights law. But States may be responsible for their failure to meet international obligations even when violations originate in the conduct of private individuals. State responsibility for the violation of

women's human rights by private actors is anticipated by customary international law. States are held legally responsible for acts or omissions of private persons in the following instances:

(a) The person is an agent of the state;

(b) Private acts are covered by provisions of a treaty obligation;

(c) There is State complicity in the wrongs perpetrated by private actors;

(d) State failure to exercise due diligence in the control of private actors.

103. The "due diligence" standard has been generally accepted as a measure of evaluating a State's responsibility for violation of human rights by private actors. 38/

104. The standards developed by customary international law have been expanded by international and regional human rights conventions and recent judicial decisions. For example, in the 1988 Valesquez case, the Inter-American Court of Human Rights imposed liability on Honduras for its lack of due diligence in preventing unexplained "disappearances", whether by the State or private actors. 39/ States were also held responsible for the organization of the government apparatus and structures of public power in order to make them capable of juridically ensuring free and full enjoyment of human rights.

105. Besides complying with the "due diligence" standard for the protection of human rights, States are required by international human rights instruments to ensure equal protection of the law for their citizens. If data collected provides evidence of systematic, discriminatory, non-prosecution by the State of crimes of violence against women, then, it is argued, States have violated their responsibility under international human rights law. 40/ Research does suggest that the investigation, prosecution and sentencing of, for example, crimes of domestic violence occur with much less frequency than of other similar crimes. Wife murderers receive greatly reduced sentences, domestic battery is rarely investigated and rape frequently goes unpunished. These examples stand in direct contrast to the treatment of violent crimes against male victims. The pervasiveness of domestic violence and its frequent non-prosecution by Governments, as well as the new emphasis on equal protection of the law as a central human rights concern, have made it possible to conceptualize crimes such as domestic violence as a human rights issue and to hold Governments accountable for this discrimination. 41/

106. This emerging trend towards holding States responsible for actions of certain private actors is reflected both in the Convention on the Elimination of All Forms of Discrimination against Women and the Declaration on the Elimination of Violence Against Women. Discrimination under the Convention is not restricted to actions by or on behalf of the State; this is expressly acknowledged, in regard to violence, in General Recommendation 19. Article 2 (e) of the Convention states that States parties are required "to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise". This provision expressly covers State

responsibility for violations by private actors. Article 16 explicitly refers to discrimination in the family and Recommendation 19 clearly includes family violence within its purview. 42/

107. The Declaration sums up the current standards in operation as they relate specifically to the question of violence against women. Article 4 (c) proclaims that States should "exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, *whether those acts are perpetrated by the State or by private persons*". All States are not only responsible for their own conduct or the conduct of their agents, but are now also responsible for their failure to take necessary steps to prosecute private citizens for their behaviour, in compliance with international standards. This emergence of State responsibility for violence in society plays an absolutely crucial role in efforts to eradicate gender-based violence and is perhaps one of the most important contributions of the women's movement to the issue of human rights.

C. Obligations of the State

108. The obligations of the State with regard to the elimination of violence against women are comprehensively spelt out in article 4 of the Declaration on the Elimination of Violence against Women. The State is obliged to condemn violence against women and is expected not to invoke custom, tradition, or religion to avoid the obligation; the State is expected to pursue all "appropriate means", "without delay" in adopting a policy of eliminating violence against women. Among other obligations of the State outlined in article 4 are:

(a) Ratification of the Convention on the Elimination of All Forms of Violence against Women (art. 4 (a));

(b) Specific directives with regard to the development of legal and administrative mechanisms to ensure effective justice for victims of violence (art. 4 (d));

(c) To ensure that there is specialized assistance in terms of support and rehabilitation for women victims of violence (art. 4 (g));

(d) Training of judicial and police officials (art. 4 (i));

(e) Reform of educational curricula (art. 4 (j));

(f) Promotion of research (art. 4 (k));

(g) Full reporting of the problem of violence against women to international human rights mechanisms (art. 4 (m)).

109. A basic premise of both the Convention and the Declaration appears to be that the law and legal institutions have an important role to play in realizing the gender equality and elimination of violence envisaged in these instruments. It is possible to perceive the emphasis given, in these international instruments, to law as a tool that can be used in combination with other mechanisms to deliver justice and equity to women. However, both

documents refrain from placing an undue reliance on strictly legal mechanisms at the expense of other methods. They make provision for the use of non-legal mechanisms, such as rehabilitation and education of the judiciary and other officials to make them sensitive to issues of gender, as necessary complements to the law in efforts to eliminating gender-based violence.

110. The Convention was the first international instrument to target tradition and culture as influential forces in shaping gender roles and family values. The Declaration followed in its footsteps in this regard. Among the obligations of the State set out in the Declaration is the obligation to "adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women" (art. 4). This is a landmark in the battle against gender-based violence, as such prejudices are most prominent in the areas of culture, community and family, which are precisely the spheres of most importance to many women. If, therefore, the State were able to bring about fundamental changes in the patterns of socialization which tend to disempower women and create an atmosphere in which violence against them appears more legitimate, it would be a significant step towards the elimination of gender-based violence.

111. In this regard, it should be mentioned that some of the States that have ratified the Convention have entered reservations indicating that they will accept it only in so far as it does not conflict with certain national customs, practices, or laws. This has caused much disagreement as it is widely felt that many of these reservations are incompatible with the basic obligations of the Convention. States should, therefore, be requested to be more circumspect about entering reservations, and consider whether the contemplated reservation is compatible with the spirit of the Convention.

112. Another of the obligations imposed on States by these international instruments should help to alleviate a major problem with regard to the elimination of violence against women, which is the lack of statistics available on the issue. Both the Convention and the Declaration impose an obligation on States to encourage research and the compilation of statistics on the subject of gender-based violence. Article 4 (k) of the Declaration directs States to

> "Promote research, collect data and compile statistics, especially concerning domestic violence, relating to the prevalence of different forms of violence against women and encourage research on the causes, nature, seriousness and consequences of violence against women and on the effectiveness of measures implemented to prevent and redress violence against women; those statistics and findings of the research will be made public".

Such statistics and research should help both by providing the basic material with which those working in the field of gender-based violence can make their programmes more effective, and by making the problem of violence more visible to the general public and the international community at large.

D. Obligations of the international community

113. The Declaration sees the international community as an essential actor in the process of eliminating violence against women (art. 5). The directives to United Nations specialized agencies, bodies and organs are intended to ensure that they promote awareness of the issue of violence against women in their programmes, collect data on the problem and periodically analyse the trends, formulate guidelines and manuals on the issue and cooperate with non-governmental organizations in addressing it. The United Nations system should, therefore, be seen as a data bank and as an awareness-raising instrument in attempting to make the international community more sensitive to the needs of women, particularly in the area of violence against women.

E. Regional conventions

114. On 9 June 1994, at Belém do Pará, countries of the Latin American region adopted the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará). Violence against women is defined in its article 1 as "any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or private sphere". Like the United Nations Declaration, the Convention of Belém do Pará divides violence against women into three broad categories: violence which occurs in the family, in the community and where it is perpetrated or condoned by the State (art. 2). However, in relation to the family, unlike the Declaration, the Convention explicitly includes people who do not and have never shared the same residence within the definition of a family or domestic unit, thus recognizing that people involved in an interpersonal relationship do not necessarily live together. This is of fundamental importance as many of the protections and remedies against violence in the family available to both the married woman and the woman living with her partner are at present unavailable to the woman who is not cohabiting with her partner.

115. Article 7 sets out State obligations in regard to the eradication of gender-based violence which are very similar to the obligations set out in the United Nations Declaration. Article 8, however, sets out additional obligations which generally deal with a broader agenda, namely that of education and the development of a mass consciousness in relation to violence against women. Among the obligations set out here, but not in the United Nations Declaration are the obligation to "promote awareness and observance of the right of women to be free from violence, and the right of women to have their human rights respected and protected" (art. 8 (a)) and the obligation to "encourage the communications media to develop appropriate media guidelines in order to contribute to the eradication of violence against women in all its forms, and to enhance respect for the dignity of women" (art. 8 (g)).

116. Chapter IV of the Convention of Belém do Pará sets out the mechanisms of protection available under the Convention. Under article 10 the States parties are obliged to include in their national reports to the Inter-American Commission of Women information on measures adopted to prevent and prohibit violence against women and to assist women affected by violence, as well as any difficulties they observe in applying those measures, and the factors that

contribute to violence against women. This is similar to the obligation imposed by the Convention on the Elimination of All Forms of Discrimination against Women to report to CEDAW. However, unlike that Convention, the Convention of Belém do Pará also provides an individual right of petition and a right for non-governmental organizations to lodge complaints with the Inter-American Commission of Human Rights. Article 12, in this regard, provides that "any person or group of persons, or any non-governmental entity legally recognized in one or more member States of the Organization, may lodge petitions with the Inter-American Commission of Human Rights containing denunciations or complaints of violations of article 7 of this Convention by a State party, and the Commission shall consider such claims in accordance with the norms and procedure established by the American Convention on Human Rights and the Statutes and Regulations of the Inter-American Commission of Human Rights for lodging and considering petitions".

IV. GENERAL ISSUES CONCERNING THE PROBLEMS ARISING FROM VIOLENCE IN THE FAMILY, IN THE COMMUNITY AND PERPETRATED OR CONDONED BY THE STATE

A. Violence in the family

1. Domestic violence

(a) Introduction

117. The family has been traditionally considered as a retreat, a place where individuals are able to find security and shelter. The family has been romanticized as the "private haven" where peace and harmony prevail. Recent research, however, points to the fact that the family may be a "cradle of violence" and that females within the home are often subjected to violence in the family. 43/

118. There are many types of domestic violence. Young girls and children are often victims of sexual assault within the family. Elderly family members and the infirm may also be subject to ill-treatment. Female domestic servants are another category which is often at the receiving end of violence. In extended families, mothers-in-law are often violent towards their daughters-in-law. Though there are many incidents of assault directed against the husband, studies show that they are not so frequent and rarely result in serious injury. Despite all those different types of domestic violence, the most prevalent is the violence of the husband against the wife.

(b) Causes

119. The causes of violence against women in the home have been analysed in detail by a United Nations report on violence against women in the family. Among the causes discussed are:

(i) Alcohol and drug abuse by the perpetrator: in one study of 60 battered women, drinking accompanied 93 per cent of the incidents. In other studies alcoholism was linked to violence in 40 per cent of the cases; 44/

(ii) A cycle of violence: the childhood of the abusive man may have been disrupted by violence in the family. Studies conclude that violence by parents begets violence in the next generation. 45/ Violence in this context is seen as learned behaviour;

(iii) "Provocation": it has been argued that in some cases the victim provokes the abuser. But research indicates that while such incidents may take place they are not the norm. The only real pattern with regard to "provocative" behaviour is the seeming failure on the part of the woman to comply with the husband's authority; 46/

(iv) Economic and social factors: early studies on domestic violence point to, inter alia, economic and social factors such as unemployment, low wages and inadequate housing, as being causes of domestic violence. Research in developing countries seems to augment these findings. Poverty seems to aggravate violence, because of stress and frustration factors. However, violence against women also exists in wealthier circles; 47/

(v) Culture: certain cultural factors may precipitate violence against women;

(vi) Structural inequality: the general structures of society and the family which accept male dominance and female submissiveness as the norm may help legitimate violence against women.

120. Violence against women within the family is a significant pattern in all countries of the globe. Of the 487 murders committed by men in England and Wales during the period from 1885 to 1905, 124 or more than a quarter, were murders of women by their husbands, while a further 115 were of mistresses or girlfriends by their men. 48/ Twentieth century figures for the United Kingdom reveal that this pattern has not changed. 49/ Similar statistics have also been found when using samples from the United States of America. 50/ Official statistics on male violence against women, other than criminal homicide, similarly reveal that the victim is most likely to be the wife of the offender. The First Report of the British Crime Survey found that 10 per cent of all assault victims were women who had been assaulted by their present or previous husbands or lovers. 51/

121. While statistics on domestic violence are more scarce in developing countries, it would appear that a similar situation exists there. For example, a retrospective study of 170 cases of murder of women in Bangladesh between 1983 and 1985 revealed that 50 per cent occurred within the family. 52/ In Papua New Guinea, of villagers interviewed, 55 per cent of females and 65 per cent of males felt that a man could use force to control his wife. 53/ In Thailand, statistics indicate that more than 50 per cent of married women studied in Bangkok's biggest slum are regularly beaten by their husbands. 54/ In Santiago, Chile, it has been found that 80 per cent of women acknowledged being victims of violence in their own homes. 55/ In Sri Lanka, 60 per cent of women interviewed in a sample survey responded that they had been subjected to domestic violence during their period of

cohabitation. 56/ The recent case in the United States of the alleged murder by the athlete O.J. Simpson of his wife and her friend has served to highlight the issue of domestic violence in the international media.

122. The traditional legal systems sanctioned violence in the family by recognizing the husband's "right to chastisement". 57/ This right was recognized by courts 58/ in many jurisdictions. In addition many legal systems allowed men to use force to extract "conjugal duties" and the crime of marital rape was unrecognized. The legal systems were therefore relatively unconcerned with abused women unless there was serious injury or a public nuisance. In some countries the defence of "honour" allowed for the easy acquittal of husbands who killed their wives. 59/

(c) Criminalization

123. In many jurisdictions this approach has changed. Today many States recognize the importance of protecting the victim of wife abuse and of punishing the perpetrator of the crime. One of the major questions facing law reformers is whether to "criminalize" wife battery. There is a sense that domestic violence is a crime between those who are linked by the bonds of intimacy. The question of intimacy, i.e. whether wife-battery should be treated as an ordinary crime or whether there should be an emphasis on counselling and mediation, poses a major dilemma for policy makers.

124. The question of whether the criminal justice system or a system of mediation and conciliation is most appropriate in dealing with domestic violence is one which arises constantly. Advocates of the criminal justice approach point to the symbolic power of the law and argue that arrest, prosecution and conviction, with punishment, is a process that carries the clear condemnation of society for the conduct of the abuser and acknowledges his personal responsibility for the activity. In addition, some research studies reveal that intervention by the criminal justice system is the most effective mechanism for stopping acts of violence both in the short term and in the long term. The Minneapolis Domestic Violence Experiment was designed to assess which of the three police responses - conducting informal mediations between the parties involved, ordering the suspect to leave the residence for eight hours or arresting the suspect - was the most effective in preventing subsequent assault. During a six-month period, research revealed that 19 per cent of those involved in mediation and 24 per cent of those ordered to leave, repeated the assault, but only 10 per cent of those who were arrested indulged in further violence towards their spouses. 60/

125. Despite these advantages of the criminal justice model, it is critical that those involved in policy making in this area should take account of the cultural, economic and political realities of their countries. Whilst it is important to attach a criminal label to this type of activity it is impossible to ignore that it takes place within the family, between persons who are emotionally and financially involved with each other. Any policy which fails to acknowledge the singular nature of these crimes and which is unaccompanied by attempts to provide support for the victim and help for the abuser will be doomed to failure. Thus, for example, policy makers considering the domestic violence programme of London, Ontario, 61/ which is often cited as a model for domestic violence treatment where a charging policy exists, must take

account of the fact that the police force, which receives intensive training in how to deal with wife battering, funds a family consultant service that provides a 24-hour crisis intervention service, whilst a community service exists which includes a battered women's advocacy clinic to provide emotional and legal counselling for women, as well as a treatment group for men who batter.

(d) Police action

126. A criminal justice approach is fundamentally dependent on the role of the police. Since the police will be the body called upon for an initial response in a complex situation, it is important that there be clear standards with regard to police action in the context of domestic violence.

127. In most jurisdictions the power of the police to enter the private premises of the individual is limited, and this acts as an important guarantee which protects the lives of ordinary women and men from arbitrary state interference. In the context of domestic violence, however, too great an adherence to this guarantee can protect the violent man at the expense of the woman. In order to guard against this eventuality, a number of Australian states have introduced legislation to clarify and extend police powers of entry to investigate offences of domestic violence. Some legislations allow the police to enter if requested to do so by a person who apparently resides on the premises or where the officer has reason to believe that a person on those premises is under threat of attack or has recently been under threat of attack or an attack on such a person is imminent. 62/ This type of provision allows the police quicker and easier access to premises and thus an opportunity either to prevent or put a stop to the violence therein.

128. Although the power to arrest for domestic crime is usually the same as for any other crime, officers are often uncertain as to their legal powers and this is so even in cases of very serious violence. Many commentators argue that the police should be given special powers of arrest in situations of domestic violence and that they should be mandated to implement these powers. They believe that arrest not only provides the woman with immediate safety, but gives her a feeling of power, leaving the man with an immediate message that his behaviour is unacceptable, a message which is said to have long-term effects on his future behaviour. Australia, Canada and England have instituted policies for the management of domestic violence which generally advocate a presumption of arrest unless there are good, clear reasons for not arresting. 63/ Such policies make it clear to the officer on the ground what type of behaviour is expected of her/him.

129. In many cases of domestic violence, immediate release of the offender on bail may be dangerous for the victim and, certainly, release without prior warning to the victim may have serious consequences for her. A number of Australian jurisdictions attempt to strike a balance between the interests of the offender and the victim by specifying conditions designed to protect the victim to be attached to the release of the offender. Thus, the offender can be released on condition that he does not drink or approach his spouse, while bail may not be granted where the offender has previously broken protective bail conditions. 64/

130. It is essential that police officers are made aware that domestic violence is a serious issue which is neither a normal part of family life nor a private problem that will not profit from police intervention. The Musasa project in Zimbabwe introduced intensive education directed at police officers on the ground. As the programme progressed, the feedback indicated that women were receiving more sympathetic and prompt assistance at the police stations than was the case previously. 65/

131. Some countries have introduced police units that have been specially and intensively trained for the purpose of dealing with spousal assault. Specific police stations for dealing with women's issues, including domestic violence, have been set up in Brazil. From the outset, the stations had two full-time police officers, eight investigators, three clerks and two prison warders, all of them women. These police stations have proved to be very successful and 41 such stations now exist in Sao Paulo. 66/ Special police desks, units and stations are increasingly becoming a means of refining police methods when it comes to the question of domestic violence.

(e) Legislation

132. Legislation with regard to domestic violence is a modern phenomenon. In the past, domestic violence was dealt with under the laws for general criminal assault. This has proved to be unsatisfactory. There is an increasing belief that special laws should be drafted, having special remedies and procedures which are most effective with regard to crime between "intimates". Though contained within the framework of criminal laws, these procedures would try to meet the special needs posed by domestic violence.

133. The first problem which arises with regard to legislation is to allow for prosecution of husbands who beat their wives even if the wives, under pressure, want to withdraw their claims. In response to this, some countries have instructed police and prosecutors to proceed with the cases even in situations where the woman indicated that she would rather not proceed. 67/ This mandatory prosecution has been one strategy employed. In addition since the wife will be the main witness, some jurisdictions have introduced legislation making the wife a "compellable witness" except in certain situations. Other jurisdictions move away from compulsory prosecution to advocacy support. In the United States of America many cities have been able dramatically to increase victim participation by providing advocates for battered women. In San Francisco, it was found that 70 per cent of women who initially wanted charges dropped agreed to cooperate once advocates addressed their concerns. 68/

134. In addition to the criminal punishment attached to assault, even in a domestic violence context, most jurisdictions recognize quasi-criminal remedies. The most important of these are the "protection" or "bound over" orders. In most jurisdictions there is a procedure whereby someone can complain to a magistrate or a justice that violence has taken place and the violent party is then "bound over" to keep the peace or be of good behaviour. The standard of proof is lower than with strictly criminal proceedings and this may provide some women with appropriate relief. Law reformers in Australia, for example, recognized the potential of the "bind over" process in cases of domestic violence. 69/ In general terms, the legislation provides

for a court order, obtained on the balance of probabilities, protecting the victim against further attacks or harassment. Breach of the order is a criminal offence and the police may arrest, without a warrant, a person who has contravened a protection order. Orders that can be made include forbidding the offender to approach the woman and limiting his access to certain premises, even the matrimonial home that he legally owns.

135. In addition to quasi-criminal remedies, civil law remedies are also available to women victims of violence. The most useful civil law remedy in relation to cases of domestic violence is probably the remedy known as an injunction or an interdict, which is used to support a primary cause of action. Where domestic violence is concerned, an injunction can be granted as incidental or ancillary proceedings for divorce, nullity or judicial separation or other civil proceedings, such as assault or battery. Such incidental relief could, for example, take the form of an order directing that the husband refrain from making contact with his wife or that he vacate the shared matrimonial home. Some jurisdictions have enacted legislation removing the requirement of applying for principle relief and allow the woman to apply for injunctive relief independently of any other legal action. 70/ This is very useful as a battered woman is then able to apply for an order directing her husband not to molest or harass her without having to apply for primary or principle relief, such as divorce, at the same time. Another civil remedy which is available in the United States of America in certain states is an action in tort 71/ claiming damages from the marital partner.

(f) Training professionals

136. Generally, all levels of the legal system are ignorant of the dynamics of domestic violence. Most police, prosecutors, magistrates and judges adhere to traditional values that support the family as an institution and the dominance of the male party within it. It is therefore necessary to train law enforcers and medical and legal professionals who come in contact with victims to understand gender violence, to appreciate the trauma of the victim and to take proper evidence for criminal proceedings. However, it is often very difficult to gain the cooperation of professionals for training of this type. Professionals in law and medicine are particularly resistant to learning from anyone outside their specialty. The Musasa project in Zimbabwe found that cooperation of the police and magistrates was facilitated by involving a legal professional in the education process and by ensuring that the content was dependable and informed. Another effective technique was to facilitate a workshop with one part of the legal system acting as host to another.

(g) Community support services

137. The nature of the crime of domestic violence requires the intervention of the community to assist and support the victims. In this regard, hospitals are an important starting point since they are often the first place that victims of violence go to. Student doctors must be made aware of the dynamics and incidence of family violence and must be taught to ask appropriate questions of patients who may be abused. Refresher programmes should be initiated on the subject, the issue should be addressed in professional and

academic journals and guidelines which assist in the identification of abuse and suggest appropriate treatment for battered women should be developed and used in hospitals and surgeries.

138. Community workers should be trained to provide information to the victim on the law and law enforcement, the available financial and other support offered by the State, the procedures for obtaining such assistance, and other organizations such as refuges, that might offer assistance. Community workers can play an important role in identifying violence, raising awareness about such issues and in directing victims to the correct procedures for seeking redress.

139. "Shelters" provide battered women with a safe haven and somewhere to go. They provide survival, safety, support, self esteem and information. The Musasa project in Zimbabwe strove to give women power over their own lives. 72/ Care must be taken that the shelters are of a decent standard, well funded and well staffed. They must be well planned and take into account religious and cultural differences that may exist between residents. Finally, any shelter or refugee system must be viewed only as a component of a coordinated and multifaceted approach to domestic violence. States should be required to encourage the setting up of shelters for women victims of violence and to provide resources for their activities.

140. Many commentators feel that any relief given to the women victims must be accompanied by "counselling" of the battered. Treatment programmes for batterers have been established in a number of countries, including Canada, the United States and Australia. The primary aim of such programmes is to prevent recidivism and studies show that six months to a year after completing treatment, 60 to 84 per cent of men have not physically abused their partners, whereas perhaps two thirds of non-treated men would have recidivated. 73/ It would therefore appear that such programmes can act as viable sentencing options for the courts, especially in cases where the women prefer that their partners get "help" rather than punishment. The establishment of counselling as an alternative sentence recognizes the intimate nature of the crime and may be more acceptable to the women victims of violence.

141. In conclusion, it would appear that an integrated approach is necessary in dealing with battered women. Most commentators propose a multidisciplinary strategy, with lawyers, psychologists, social workers and others working together to gain a holistic understanding of each particular case and the needs of the individual victim. Giving attention to the real life context of the battered woman, her hopelessness, dependency, restricted options, and her consequent need for empowerment underpins the Chilean approach, for example, to wife abuse. 74/ The aim is to work with the battered woman to develop her capacity to decide her own future.

142. Most of the strategies discussed in this paper have been short-term ones. However, in order effectively to confront violence against the woman at home, these short-term measures must merge with longer-term ones. Education and training can provide this link. Formal education in schools can be used to eliminate stereotypical attitudes; the subject of family violence should be part of the curriculum and peaceful methods of conflict resolution explored. Informal methods of education can also be used, first to advise women of

available options and support systems and also to convey the message to both women and men that family violence is to be deplored. Here attention should be paid to the particular national and cultural context so that suitable strategies can be used. In some countries it may be appropriate to produce simple booklets. 75/ Other countries have used poster campaigns. 76/ Some countries may find video and television advertising effective. Where literacy is high, newspaper campaigns can be effective, as can public speaking and easy writing competitions. Papua New Guinea, for example, has mounted a multi-pronged education campaign, consisting of the dissemination of posters and leaflets to all aid posts, health centres, clinics, hospitals, schools, post offices, banks and churches, and radio advertising and radio plays. 77/ To cater for the non-literate population, street theatre and video have been used, an approach which has been taken in Jamaica. 78/ A concerted effort at raising awareness is perhaps the most effective measure against domestic violence in the long-term.

2. Traditional practices

(a) Introduction

143. In many societies, women are subject to violence because of traditional practices. Among such practices which violate women's human rights are female genital mutilation, son preference, gender difference in nutrition, early childhood marriage, violence related to dowry, widow burning and virginity tests. All these practices have received international attention as aspects of the problem of women's human rights.

144. Valuable ground-breaking and informative research on the issue of traditional practices affecting the health of women and children has already been carried out by the Special Rapporteur on traditional practices affecting the health of women and children of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, as well as its Working Group on traditional practices, the Inter-African Committee for Traditional Practices, the World Health Organization and numerous other institutions. The intention of the Special Rapporteur, therefore, is to argue that, on the basis of these materials and documentation, traditional practices should be construed as a definite form of violence against women which cannot be overlooked nor be justified on the grounds of tradition, culture or social conformity.

145. The delicate nature of questioning the very existence of these age-old practices, which are deeply rooted in the tradition, culture and power inequities of societies and often serve as initiation rituals by which young women are integrated and accepted into a community, as well as the lack of information and education in many regions where these practices are prevalent, are all factors which contribute to the continuing existence of these practices despite the United Nations repeated condemnation of all practices that affect the health of women and children and its repeated calls for their complete eradication. In this connection, the Special Rapporteur would like to draw the attention of the Commission on Human Rights to the Plan of Action for the Elimination of Harmful Traditional Practices affecting the Health of Women and Children, prepared in connection with two regional seminars organized by the Centre for Human Rights in Burkina Faso for the African

region and in Sri Lanka for the Asian region. This Plan of Action will be available to the Commission on Human Rights at its present session for consideration (E/CN.4/Sub.2/1994/10).

(b) Female genital mutilation

146. The number of sexually mutilated women and girls in Africa and in some parts of Asia has increased to 100 million in 1994. According to the World Health Organization, a further 2 million girls are estimated to be at risk of the practices each year - most of them live in 26 African countries, a few in Asian countries, and their numbers are increasing among immigrant populations in Europe, Australia, Canada and the United States of America. 79/ Infibulation is practised in Somalia, Djibouti, the northern part of the Sudan, some parts of Ethiopia, Egypt and Mali. Excision and circumcision occur in the Gambia, the northern part of Ghana, Nigeria, Liberia, Senegal, Sierra Leone, Guinea, Guinea-Bissau, Burkina Faso, parts of Benin, Côte d'Ivoire, parts of Tanzania, Togo, Uganda, Kenya, Chad, Central African Republic, Cameroon and Mauritania. 80/ Outside Africa a certain form of female circumcision is practised in Indonesia, Malaysia and Yemen. Minority communities and immigrant communities drawn from the above countries, living in other parts of the world, also practise some form of female genital mutilation.

147. Female genital mutilation takes various forms, ranging from clitoridectomy (partial or total removal of the clitoris) and excision (the removal of the clitoris and the labia minora), which account for approximately 85 per cent of female genital mutilations, to its most extreme form, namely infibulation (the complete removal of the clitoris and the labia minora, as well as the inner surface of the labia majora; the vulva is then stitched together so that only a small opening is preserved in the vagina to allow for the passage of urine and menstrual blood. 81/

148. The procedures are generally carried out by traditional birth attendants or elderly women of the village designated for this task using special knives, scissors, scalpels, pieces of glass or razor blades. Unintended damage occurs because of crude tools, poor light and septic conditions. Anaesthetics and antiseptics are generally not used. The age at which circumcision is carried out varies from a few days to seven years. 82/

149. These deliberately inflicted acts of violence may cause grave physical and psychological damage to women and girls, in the short and long term. The pain and traumatic experience itself may scar the minds of young women. Sexual intercourse and childbirth may be extremely painful and result in complications. Other health consequences have been recorded, such as haemorrhage, shock, infection, tetanus, gangrene, urine retention, injury to adjacent tissue, as well as more long-term problems such as bleeding, infertility, incontinence, fistulae and increasingly HIV/AIDS.

150. According to the World Health Organization, along with an increasing awareness of the dangerous repercussions of female genital mutilation, attitudes are gradually changing towards the gradual elimination of harmful traditional practices, especially among the more educated, urban communities.

However, at the same time, a trend to "medicalize" the practice of female genital mutilation, that is to carry out the operation in clinical conditions to reduce the health risks, has been detected.

> "The World Health Organization continues to advise unequivocally that female genital mutilation must not be institutionalized, nor should any form of female genital mutilation be performed by any health professionals in any setting, including hospitals or other health establishments." 83/

151. Except for industrialized societies where female genital mutilation is practised by immigrant populations, few countries have legislation prohibiting female genital mutilation. The criminalization of the practice of female circumcision has occurred only in countries such as France and the United Kingdom.

152. Since female genital mutilation is a sensitive issue in many societies, women's groups have preferred to rely on education, information and awareness-raising to combat the practice. They argue that legal strategies are not effective against customary practices. Since there is cultural acceptance and even celebration of the practice, in some societies, they argue that it is important to approach the question as a health issue, relying on doctors and educationalists as the major catalysts for change.

153. But, some argue that this is not enough. Since female genital mutilation is violence against women and since such violation has become of increasing concern to the international community, it is believed that legal strategies which give expression to international norms should be pursued. Legal prohibition of such a practice, accompanied by criminal sanctions, would be in keeping with international human rights standards. Such a strategy of prohibiting the practice, and criminalizing associated conduct must be accompanied by education programmes aimed at raising awareness among the people. A concerted international and national campaign should be conducted to raise consciousness about the pervasiveness of this practice and the need for its eradication.

(c) Son preference and gender difference in nutrition

154. Given the present number of men in India and in China, there should today be 30 million more women in India and 38 million more women in China than there are. 84/

155. The prevalence of son preference, more marked in Asian societies and historically rooted in the patriarchal system, cannot be ignored. Son preference has been defined in a report of the Working Group on Traditional Practices affecting the Health of Women and Children of the Sub-Commission as "the preference of parents for male children which often manifests itself in neglect, deprivation or discriminatory treatment of girls to the detriment of their mental and physical health" (E/CN.4/1986/42, para. 143). Son preference has also been found to be directly associated with a high mortality risk for women.

156. The entire life cycle of a woman can be affected by this practice, from its most extreme forms of foetal or female infanticide to neglect of the girl child and woman over her brother and husband as far as adequate nutrition, basic health care, access to education and information, recreation and economic options are concerned. Such sayings as "To have a son is good economics and good politics, whereas bringing up a girl is like watering the neighbour's garden" illustrate the attitude in societies where son preference is prevalent. The male child, and later the man, are considered to ensure the continuity and protection of family property, to provide "an extra pair of hands" by bringing in a bride and to provide for parents in their old age.

157. By contrast, the young woman has a subordinate and vulnerable status. Already at the foetal stage, amniocentesis tests, sonography and increasingly developed technological methods for sex determination often lead to the abortion of the female foetus. The girl continues to be subjected to violence and discrimination through differentiating food practices, resulting in malnutrition and retarded growth. Her sexuality is often controlled through physically and mentally violent practices. During sickness, the woman is not provided with medical care, generally to the benefit of the sick male. Son preference and gender discrimination continue to affect women's access to education and their low literacy rate, and seem to be instrumental in promoting the practice of early marriage, which may prove equally detrimental to the physical and mental health of young women.

158. In families where food is scarce, the more nutritious food is kept for the male child. A WHO report of 1985 shows these preferential feeding practices and gender bias in nutrition. 85/ The same report points to differential treatment in health care and access to education.

159. This gender bias from birth which discriminates against women when it comes to nutrition, education and health amounts to violence against women. However, legal strategies are unlikely to be effective in this context. Initially, there must be an attempt to collect gender disaggregated data so that the problem of gender bias becomes more apparent. Special education and health programmes must be devised to prevent these discriminatory practices.

(d) Early marriage and dowry related violence

160. In India, 11,259 dowry related deaths were recorded in the last three years, 86/ in Nepal, 40 per cent of girls under the age of 15 are already married. 87/

161. Traditional marriage and related practices obviously still prevail in a number of societies, especially in the Asian and African regions and may range from death as a result of dowry debts to early marriage, childhood pregnancy, nutritional taboos and delivery practices to bride/widow burning.

162. In many societies the payment of a dowry is required for the groom to marry. In addition, the expenses for the marriage are also borne by the bride's family. Failure to provide the agreed amount of dowry could mark the beginning of violence within the family for the woman. She may be verbally abused, mentally and physically tortured, starved and, in certain communities, even burnt alive by the husband and/or his family members. 88/

163. Early marriage is intended to guarantee a woman's virginity, relieve her family of the burden of a mouth to feed and ensure a long cycle of fertility to produce a number of sons. Yet early marriage generally leads to early childhood/teenage pregnancy, which in its turn, as stated at the Second United Nations Regional Seminar on Traditional Practices affecting the Health of Women and Children, lessens the life expectancy of girls, adversely affects their health, nutrition, education and employment opportunities and lowers their economic participation rate. Furthermore, maternal and child mortality rates are found to be extremely high in areas such as South Asia, where the use of traditional birth practices has been recorded.

164. Violence related to the institution of marriage is of grave concern to those interested in women's rights as human rights. The Governments of India and of Bangladesh have sought to criminalize violence related to the dowry. The Indian penal code contains provisions with regard to dowry deaths, which allow for such crime to be deduced from circumstantial evidence and for the strengthening of police powers. The crime also carries the maximum penalty. 89/ The proper implementation of these provisions is absolutely necessary if dowry deaths are to be prevented.

165. The age of marriage is also a factor which contributes to the violation of women's human rights. According to a WHO report, over 50 per cent of first births in many developing countries are to women aged less than 19. 90/ Early marriage of the female child should be prohibited. Marriage of female children under the age of 18 should not be encouraged and States should adjust their laws accordingly.

(e) Other practices

166. In many traditional societies, pregnancy and childbirth are events surrounded by numerous myths and practices. As a result of dietary restrictions, many women are undernourished during maternity and have a low intake of essential proteins and vitamins, which in turn has implications for the health of the new-born. Labour and childbirth are often characterized by unhygienic conditions, unskilled assistance, as well as by religious rituals practised by traditional birth attendants. It must, however, be mentioned that some religious rituals may have a supporting effect on the women themselves and are felt to be reassuring. 91/

167. In India, the practice of widow-burning or sati, which has had a resurgence in recent years, has been outlawed both by national and State Governments. Though this is welcome, there is still concern that the practice may occur in small communities and that effective implementation of the laws is absolutely necessary. 92/

168. In many societies, women are subject to virginity tests on their marriage night or as part of a prosecution for rape or sexual abuse. A recent report by Human Rights Watch highlights this practice in Turkey. 93/ State agencies should not collaborate in the practice of virginity tests as it is a violation of a woman's human rights. In addition, action should be taken to prevent customary practices which degrade women by forcing them to submit to virginity tests whether in State-run dormitories, State orphanages, or by private families.

169. From the above facts, it seems painfully obvious that violence against women manifests itself in its possibly most blatant form through traditional practices affecting the health of women and children. These culturally conditioned practices are not only dangerous to women's health, at times even resulting in their death, but also violate the basic human rights of women and seriously impair their dignity. Though the infliction on them of different forms of physical and mental violence throughout their life span, girls and women are denied their human right to be free and independent, and to live in a secure environment within their families, homes and communities.

(f) Traditional laws

170. Certain traditional practices and sanctions which are violent towards women are justified by special legislation. The public stoning and lashing of women serve to institutionalize violence against women. The Special Rapporteur has received many allegations of such violent punishments being inflicted on women in the Islamic Republic of Iran, for example. It is important that research be conducted with regard to these laws to ascertain their impact on the full enjoyment of human rights by women and that these laws be reconsidered in the light of universally accepted human rights standards.

(g) Death threats

171. Women who defy traditional practices and related legislation often are sometimes at the receiving end of death threats and violence, for example the writer Taslima Nasreen of Bangladesh and Asma Jehangir of Pakistan. In Algeria, according to information received by the Special Rapporteur, women have been killed or have received death threats, especially in March 1994. Among the victims was Mme Meziane, the director of a school in Bet Khadem. This tradition of violence against women who do not conform to cultural norms is frequent in many societies. Government inaction in the face of such threats results in women being denied their fundamental human rights - especially the right to life. It is important that Governments investigate and prosecute those who issue such death threats with seeming impunity (see report of the Special Rapporteur on the right to freedom of opinion and expression, Mr. A. Hussain (E/CN.4/1995/32)). Non-State actors should be held internationally accountable for their activities with regard to violence against women.

B. Violence in the community

1. Rape and sexual assault

(a) Introduction

172. Rape has often been described as the primary instrument of control in a patriarchal society. 94/ Clinical tests show that rapists present very normal attributes. Most rapists are in fact known to their victims. 95/

173. Effective prosecution for rape is one of the fundamental demands of the women's movement. Rape occurs in the family in the form of marital rape or incest; rape occurs in the community, it is used as an instrument of torture

by States against women in detention; and rape occurs in situations of armed conflict and in refugee camps. Women's vulnerability to rape is one of the main factors which prevent their empowerment and their enjoying equality with men.

174. For a long time, women have argued that rape is a form of torture inflicted by both private and public actors in violation of the international human rights instruments. 96/ Rape prevents women from living in security and dignity and therefore violates international standards set out in the International Covenants and the Universal Declaration (see chap. III).

175. States have an international legal obligation to investigate, prosecute and punish rapists. State discrimination in not pursuing cases involving violence against women has been documented by some groups. 97/ This non-prosecution is a serious issue and can only be overcome by raising awareness among the police, the judiciary and the general community.

(b) Police action

176. The police are often insensitive to issues concerning rape. They are often suspicious of complainants, particularly if there is no sign of injury, if the woman knows the offender, if she delays reporting the rape or if she appears unnaturally calm or unemotional. If the woman is seen as being morally dubious, as she will be if she is living with her boyfriend, is sexually experienced or is a prostitute, the allegation will be completely in doubt. Police stations are the traditional rape reception agencies and the police response to complainants requires priority attention. Education and training are essential for prejudice and negative attitudes to be eliminated and practical approaches to a complaint imparted. In Malaysia, women-only rape squads have been formed by the police and a policy directive established that only women police officers handle rape victims. 98/ In the United Kingdom, police have developed "rape suites". These are specifically designed interview rooms, equipped with a bathroom and examination couch. The victim is interviewed and examined in the "suite", which is separate from the main station interviewing area and provides pleasant and comfortable surroundings. 99/ In Brazil there are women-only police stations which deal with the problem of violence against women.

(c) Services

177. Many countries have established what are sometimes called "rape crisis centres". Some of these operate a telephone advice service or a short-term residential facility for victims. Most provide sympathetic and knowledgeable support to victims. These rape crisis centres provide integrated services to women victims of violence. Centre staff accompany the victim to the police station and the hospital to give her support. They provide her with legal and counselling services and work closely with hospitals, the police station and the prosecutor's office. They are basically intended to give the woman victim courage to face the difficult and often embarrassing procedures that the legal process requires. 100/ These centres are augmented by non-governmental organizations and government services, which include information networks, hotlines and counselling services.

178. Hospitals are another important institution which needs to be sensitized with regard to women and rape. In Malaysia, the rape crisis centres have been set up in the hospitals and a special room in the hospital is designated for the examination of rape victims; the police are called there to take the report from the victim; only one doctor examines the victim; and a volunteer from a woman's organization is called to counsel her during this period and provide her with information and support so that she can make decisions regarding treatment and police action. 101/

(d) Legislation

179. The criminal laws which exist with regard to rape also pose certain problems. In most cases rape is defined as sexual intercourse with a woman, against her will and without her consent. Questions emerge as to what is "sexual intercourse", what is "consent" and what are the relevant rules of evidence which should govern a case concerning rape.

(e) Sexual intercourse

180. Most jurisdictions consider sexual intercourse for the purposes of rape to exist only where there is penile penetration of the vagina. However, frequently, the offender is unable or chooses not to penetrate his victim in this manner, but may force her to perform acts of oral sex, penetrate her with other parts of the body or other objects or demean her in other ways. A number of jurisdictions, especially in the Commonwealth, have thus taken the view that this concentration on penile penetration is misplaced. Some define sexual intercourse to include anal and oral acts of sex. 102/ Others go further and include the insertion of objects into specified orifices while some others also cover cunnilingus. 103/ These jurisdictions which have redefined rape to include acts beyond penile penetration seek to stress the demeaning and violent aspects of rape, rather than its sexual nature.

(f) Sexual assault within marriage

181. In many countries sexual assault by a husband on his own wife is not regarded as unlawful sexual intercourse and thus is not a crime. This is based on the assumption that the wife gives herself up to the husband by entering into the contract of marriage. Some jurisdictions have, however, done away with this marital immunity. 104/

(g) The complainant's consent

182. In most countries, rape is defined by statute or by common law as sexual intercourse without the consent of or against the will of the victim. Research from all jurisdictions indicates that any woman who has to prove that she did not consent will face enormous difficulty unless she shows signs of fairly serious injury. She will face particular difficulty if she knows or has had a sexual relationship with the man in the past. Thus a number of jurisdictions have attempted to shift the emphasis of the crime away from her consent. Most take as their inspiration the Michigan Criminal Sexual Conduct Act 105/ which eliminated consent as an element of the crime, focusing on the conduct of the offender, rather than the consent of the victim. Thus, "criminal sexual conduct" is committed when sexual intercourse occurs where

the accused uses force or coercion or in circumstances where the victim is deemed to be incapable of giving consent, with force or coercion receiving a wide statutory definition.

183. Related to this concept of consent is the question of whether consent which is grudging or elicited following substantial pressure being applied should be inoperative. It would appear appropriate that consent be vitiated where it is gained by the imposition of the other person's position of authority over, or professional or other trusting relation to the victim. Thus, following certain incidents and revelations in Bihar and Maharashtra, legislation in India has shifted the burden of proof in cases of women raped in State institutions, i.e. custodial rape, so that those in power have to prove that a rape did not take place. 106/ Some jurisdictions have introduced the crime of "inducing sexual connection by coercion", which occurs where sexual activity takes place when the offender knows that the complainant consents because of the offender's position of power. 107/ Similarly, others provide that where consent to sexual intercourse is obtained by virtue of a "non-violent threat", defined as intimidatory or coercive conduct or other threat, not involving a threat of physical force, in circumstances where the victim could not reasonably be expected to resist the threat and where the offender is aware that submission is gained because of the threat, the offender is liable to six years' imprisonment. 108/

(h) Evidence

(i) Corroboration

184. Where most crimes are concerned, the accused can be convicted on the testimony of one individual, but where the crime is sexual, the evidence of the victim alone is insufficient and it is essential that it be corroborated in some way. Additionally, in a number of countries, although corroborating evidence is not specifically required, there is a rule of law that the judge must tell the jury that it is unwise to convict on the uncorroborated testimony of the victim. In some countries, the testimony of the victim has to be corroborated by four male witnesses. 109/ Many countries have recently recognized that there is little justification for the requirement of corroboration and that it seriously impedes the conviction of sexual offenders, and have thus done away with the requirement. Canada, for example, provides that no corroboration is required for conviction and that the judge shall not instruct the jury that it is unsafe to convict in the absence of corroboration. 110/

185. Evidence of the victim's past sexual history with men other than the accused is often introduced in rape trials either to prove that the woman is of "notoriously bad character", for example a prostitute or highly promiscuous and thus likely to have consented to intercourse, or to prove that she is unreliable and thus her evidence is suspect. The complainant faces a barrage of questions in cross examination about her past sexual, social and medical experiences which seek to protect the defendant and denigrate the character of the victim. Although it is rare for the complainant's past sexual history to have any bearing on the particular complaint, evidence on the topic will affect a jury and inevitably lead to the acquittal of the accused. Many countries have, therefore introduced reforms which seek to limit the

introduction of evidence concerning the complainant's sexual history. The Canadian provision states that evidence of the complainant's past sexual activity with the accused may be freely admitted, but no evidence may be adduced as to the complainant's past sexual history with any other person, unless it is evidence which falls within three limited categories. Even if the evidence falls within one of these categories, it is admissible only after reasonable notice in writing of the evidence and its particulars have been given to the prosecution and the judge has conducted a closed hearing, after which she decides that the evidence falls within one of the categories. 111/ In Australia, the legislation of New South Wales absolutely prohibits evidence of sexual reputation, while evidence of sexual experience is inadmissible except in specific circumstances. 112/

(ii) Court proceedings

186. Current court practice and procedures can exacerbate the complainant's ordeal during trial. These include long time lag between incident and trial, lack of information about the progress of the case and the whereabouts of the offender, and the demeanour of the prosecutors, judicial officers and other persons with whom she may have to deal. A number of jurisdictions have legislated with these points in mind. In New Zealand, for example, the Victims of Offences Act 1987 directs prosecutors, judicial officers, counsel, officials and other persons who deal with victims to treat them with courtesy, compassion and respect for their personal dignity and privacy. Victims are to be informed of the services and remedies available to them and the conduct of the proceedings. They should be protected from intimidation, their views on bail and any fears they should have about the offender are to be imparted to the court deciding any bail application and they are to be notified of the release or escape of the offender. In some countries, provisions have been introduced to limit the number of persons who can be present at the trial. Some provide for in camera proceedings, some provide that the court is to be closed to all except specified persons when the complainant gives her evidence and others allow her to give evidence in written form.

(iii) Sentencing

187. Light sentences in sexual assault cases not only trivialize the experience of the individual victim, but also carry the wider implication that female sexual victimization is unimportant. Criticism of sentencing practice in cases of rape has led some jurisdictions to set minimum penalties. In the United Kingdom, for example, courts have laid down specific guidelines concerning rape offenders. 113/ These proceed on the basis that the offender should receive a custodial sentence, unless the circumstances are most exceptional and that the minimum penalty, in the absence of mitigating factors, should be five years' imprisonment. Particularly dangerous offenders, such as serial rapists, should be sentenced to at least 15 years' imprisonment, while in some cases, for example where the offender is a psychopath, he should be imprisoned for life. Some jurisdictions provide that the sentencing judge should receive an oral or written statement from the prosecutor about the physical or emotional harm that the victim has suffered. 114/

(iv) Treatment programme for offenders

188. The value of treatment programmes is more readily accepted in the United States than in Britain. One well established programme is a treatment unit set up in South Florida State Hospital which aims to rehabilitate incarcerated rapists and other serious sex offenders, largely by means of group discussion and self-help enterprises. Wives and girl-friends are drawn into the system and special attention is given to after-care following a gradual transition to the community. For instance, ex-offenders are given pocket telephones which they can use to dial another ex-offender volunteer for support whenever they feel the urge to re-offend creeping up on them. 115/ The possible value of such treatment programmes should be evaluated before they are set up and care must be taken to ensure that such programmes are not used as a substitute for prosecution.

Public education

189. In addition to the education of police officers, judges and other court officials, it is essential that the general public is also educated and a mass consciousness raised. In Malaysia, exhibitions and theatrical presentations, including talks and discussion sessions, were made to women's groups, schools, communities and professional groups such as nurses, police and counsellors. Many women's groups were mobilized to continue the consciousness raising programmes. To enable these groups to develop educational programmes, training sessions were held and a campaign kit, pamphlets and rape counselling booklets were produced as resources. Finally, in order to equip the leaders with the necessary skills for public speaking, representative action and writing, training sessions for them were organized. The media's role was also emphasized. Articles and reports began to appear in the press. The electronic media made an effort to have special reports on rape at prime news times. One newspaper even carried a survey for four continuous weeks with cases of rape victims. 116/ In the end, effective public opinion will be the most formidable weapon against rape in society.

2. Sexual harassment

(a) Introduction

190. Sexual harassment in the workplace and elsewhere has become an increasingly important issue on the agenda for women's rights, with recent reports pointing to the widespread occurrence of the phenomenon and its serious and disturbing effects. In designing strategies to combat the phenomenon, it is of vital importance that an adequate definition of sexual harassment be first agreed upon. Behaviour which falls within this definition is bound to be very diverse and would include behaviour which is considered "normal" in today's social context, as well as behaviour which falls within the definition of many legally recognized sexual offences. The search for an adequate definition of sexual harassment is likely to be difficult and will vary with cultural values and norms. However, there are two vital ingredients to such conduct. First, it is conduct which is unwanted by the recipient, in other words, unwelcome sexual attention. Second, it is conduct which from the recipient's point of view is offensive or threatening. 117/

(b) Legal strategies

191. Some examples of sexual harassment fall within the definition of the crimes of rape, sexual assault, indecent assault or common assault. Where this is the case and since many countries have criminal laws against such activities, the woman can complain to the police, who may choose to institute a criminal prosecution against the offender. In some cases, if the police choose not to prosecute, the woman herself may prosecute privately. The woman also has the option, whether or not a criminal prosecution is being instituted, to pursue a civil action in either contract or tort, depending on the circumstance in which the offence was committed.

192. When sexual harassment takes the form of acts of violence or indecency, it is regarded as a criminal offence. The German penal code imposes penalties on individuals who abuse their authority to obtain sexual favours; while in Denmark, sexual harassment is condemned under section 220 of the Penal Code, which prohibits any abuse of the subordination or financial dependence of an individual with a view to obtaining sexual favours outside of marriage. 118/

193. In most countries, women walking in public places or travelling on public transport are subject to a great deal of harassment. In India, certain sections of the Penal Code establish the offence of insulting the modesty of a woman, whether by word, gesture or act. 119/ Further, the Delhi Metropolitan Council has criminalized "Eve teasing", which is defined as words, spoken or written, or signs or visible representations or gestures, or acts or reciting or singing indecent words in a public place by a man to the annoyance of a woman. 120/

194. Where sexual harassment occurs in the workplace, other non-criminal legal remedies may also be available. For example, the United Kingdom Sex Discrimination Act 1975, while not specifically prohibiting sexual harassment, proscribes sex discrimination, defined as treating a woman less favourably than a man, and makes it unlawful for an employer to discriminate against her by dismissing her or subjecting her to any other detriment for the sole reason that she is a women. Courts have concluded that sexual harassment is sex discrimination and that proven harassment may render an employer liable in damages. 121/

195. In the United States of America, any discrimination is prohibited at work on the grounds of sex. 122/ In 1977, a United States court acknowledged for the first time that sexual harassment constituted a form of sex discrimination. 123/ Subsequently, United States case law expanded the concept of sexual harassment in two directions. First, by providing for what is called a "quid pro quo" case of sexual harassment. This form of sexual harassment consists in extorting sexual favours against the threat of punishment or the promise of professional advantage. 124/ Secondly, the courts accepted that sexual harassment took place, even if the victim was not subjected to blackmail, if the actions of the individual engaged in harassment caused a degradation of the victim's working environment. 125/

196. Remedies for sexual harassment in the workplace are also available under employment protection legislation which exists in some countries to protect

workers from unfair dismissal. 126/ For example, Greek legislation allows for the termination of a contract of employment in the event of changes to the conditions of the contract which are unfavourable to the employee. 127/ It has been successfully applied in a case in which the court found that an employee was entitled to resign or to claim compensation in the event of dismissal on the grounds of an unfavourable change to the contract of employment after having been harassed by the employer. 128/

197. Recently, specific provisions aimed at discouraging sexual harassment in the workplace and elsewhere, such as educational institutions, have been enacted in a number of countries. For example, the Canadian Federal Human Rights Act prohibits sexual harassment in employment and in the provision of goods and services where these come within the jurisdiction of the federal Government. This legislation is complemented at federal level by the sexual harassment provisions of the Canada Labour Code which requires employers to issue a sexual harassment policy which condemns sexual harassment, indicates that disciplinary measures will be taken against transgressors, provides for procedures to deal with instances of harassment and informs employees of their rights under the Human Rights Act. In Portugal, legislation establishes that an employer must impose disciplinary measures on anyone who by his/her conduct, provokes or creates conditions that lead to the demoralization of workers and more particularly women. 129/

198. In a number of jurisdictions, liability for sexual harassment in the workplace extends beyond the individual offending employee and renders the employer vicariously liable. In Denmark, under the Equal Opportunities Act the employer could be held liable for sex discrimination which includes sexual harassment and the situation is similar in the United Kingdom under the Sex Discrimination Act. Likewise, in Denmark, Germany and Ireland the employer may be held liable for unfair dismissal on the grounds of sexual harassment, whilst in France the employer is considered liable in the event that he has not taken the necessary preventive measures. 130/ This has two advantages for the complainant. First, she is assured of adequate compensation if she is successful, because the employer is usually financially viable. Second, the threat of imposition of vicarious liability results in employers taking positive steps to ensure that offences of this nature do not happen.

(c) Other strategies

199. The nature of sexual misconduct is such that women have tended to concentrate on legal remedies and more or less formal methods of complaint. Organizations concerned with sexual harassment have been established in a number of countries. In the United Kingdom, Women Against Sexual Harassment (WASH) publicizes the issue, provides training for employers and support and advice for complainants of harassment. In Canada, the Women's Legal Education and Action Fund (LEAF) conducts test cases and provides assistance in claims of sexual harassment, as does it's British sister organization, the Women's Legal Defence Fund. 131/

200. Throughout the world, trade unions have issued guidelines and protocols to raise awareness and address the issue. In 1981, for example, in the United Kingdom the National Association of Local Government Officers (NALGO), the largest white collar union, issued guidelines for members on combating

sexual harassment at work. NALGO's lead has been followed by other trade unions in the United Kingdom and elsewhere. 132/ For example, in Italy, in November 1989, the Italian Confederation of Workers' Unions, the Italian Workers' Union and the Italian General Confederation of Labour adopted a joint position from which to combat sexual harassment in the workplace. 133/

201. Codes of conduct and protocols dealing with sexual harassment have also been issued by human rights commissions. The New Zealand Human Rights Commission, for example, issued "Eliminating Sexual Harassment - A Guide for Employers", which suggests strategies for approaching workplace harassment and provides a guide for those in charge of the management of the problem in 1986. Similar guides have been produced by the Canadian and Australian Commissions, while the Report of the Commission of Inquiry (Integrity Commission) in Guyana, issued in 1987, suggested the formulation of a code of conduct for persons holding positions in public life. 134/

202. Sexual harassment of women in the workplace, educational institutions and elsewhere defines the role of women in sexual terms and serves to perpetuate their subordinate role in society. Sexual harassment constitutes a form of sex discrimination, for it not only degrades the woman but reinforces and reflects the idea of non-professionalism on the part of women workers, who are consequently regarded as less able to perform their duties than their male colleagues. Accordingly, it should be treated as a serious and important issue.

203. Government bodies can do much to increase awareness of the seriousness of sexual harassment and the procedures that can be invoked to confront it. Arresting pamphlets have been issued in Australia, Canada, New Zealand and the United Kingdom which could be used by other countries in developing strategies to deal with sexual harassment. The Australian Human Rights and Equal Opportunities Commission, moreover, conducted a major campaign about sexual harassment in 1990, which was effective in sensitizing the community about the issue. This campaign, entitled SHOUT (Sexual Harassment is Out), consisted of a poster, magazine and radio advertizing campaign, with the facility of a toll free telephone line for women who wished to provide information about sexual harassment. 135/

(d) The United Nations system

204. The Special Rapporteur has received certain allegations with regard to sexual harassment within the United Nations system. She will, in due course, write to the United Nations officials concerned with a request for clarification. However, it is important to state in this preliminary report that the United Nations system must be above reproach with regard to such issues. Effective rules and procedures must exist for vindicating the rights of women who are subject to sexual harassment.

3. Prostitution and trafficking

(a) General description

205. Prostitutes are a heterogenous group, with different interests, different understandings of their rights and positions, and different vulnerabilities.

The "call-girl" or "escort" is relatively better off and more independent than the girl-child who is trafficked into foreign countries where she has no economic basis or cultural or familial ties. The prostitute or commercial sex worker (hereinafter, "CSW") in industrialized countries may belong to fairly sophisticated unions (albeit largely unrecognized) or movements whose agendas often conflict with those of feminist organizations working ostensibly on their behalf; the CSW in developing countries does not have access to effective networks of support or organization. 136/ Some women become prostitutes through the exercise of "rational choice"; others become prostitutes as a result of coercion, deception or economic enslavement. A discussion of prostitution must accept the premise that prostitution as a phenomenon is the aggregate of social and sexual relations which are historically, culturally and personally specific. The only common denominator shared by the international community of prostitutes is an economic one: prostitution is an income generating activity, marked by a degree of commercial indifference between client and worker.

206. The size of the CSW population worldwide is not known, and estimates are unhelpful. In Thailand, for instance, the estimated number of female prostitutes ranges from 70,000 to 2 million. 137/ CSWs are relatively well-remunerated compared to the average unskilled female labourer. 138/ In the Republic of Korea, for instance, a CSW earns between US$ 4,500 and 9,000 per year, while the female worker in the garment industry earns US$ 135 to 480 per year; in the Netherlands, a CSW earns US$ 30,000 per annum, while a woman in the garment industry earns US$ 15,000. 139/ The income earned by the CSW is trivial however compared to the massive profits realized by those who are organizationally involved in the commercial sex industry (travel agencies, hotels/bars, airline companies, "pimps" and "madams"). 140/ The economic advantages which accrue all around account for the continued growth, and indifference to the attendant problems, of the commercial sex industry.

(b) Nature of the abuse

207. As a result of these enormous economic incentives, CSWs are particularly vulnerable to economic exploitation. While the extent of domination and bondage varies according to the socio-economic conditions faced by each CSW, they are all subject to a certain degree of exploitation. They usually only realize a small percentage of their earnings: in Germany, for example, the CSW gets only DM 80 of the DM 350 that is charged for her services. 141/ The condition of the German prostitute in this example, however, is markedly better than the condition of prostitutes who are held in debt-bondage and who see no percentage of their labour earnings at all. Because prostitution is illegal in most countries, or highly regulated in countries where it is legal, CSWs face enormous legal and moral isolation. Their legal status is vulnerable, and their social status is highly stigmatized. In countries where prostitution is illegal, they are subject to detention and possible abuse if they lodge a complaint, or they have to bribe local police officers to help them. 142/ The rape of a prostitute in some countries does not amount to justiciable rape. The situation is not that different even where prostitution has been legalized: a prostitute may be subject to abuse, including rape, from the police as well as from her pimp or manager, in spite of having a justiciable claim. The social stigma which attaches to the vocation of

prostitution isolates many women from their families and friends, a particularly tragic irony since many prostitutes are working in order to support their parents and children. 143/

208. CSWs are also subject to extensive health hazards. Sexually transmitted diseases (STDs) are prevalent among CSWs. Few CSWs have enough autonomy to be able to refuse intercourse with a client or to insist on condom usage. HIV/AIDS is a very real risk factor for all CSWs. In a study conducted by Asia Watch, 14 out of 19 girl prostitutes in Thailand tested seropositive. Male to female transmission of HIV/AIDS is three times more efficient than female to male transmission, 144/ which means that the virus spreads rapidly through prostitution communities, primarily via male clients. Shared use of depo provera needles among women in brothels or shared use of heroin needles among drug prostitutes also accounts for a rise in the rate of HIV/AIDS transmission in the prostitute community. 145/ Because of their illegal status, prostitutes by and large do not or cannot seek adequate medical attention. Their economic vulnerability requires that they hide their medical status as much as possible from clients and managers, although CSWs working in brothels are known to be forcibly tested for HIV/AIDS infection in direct contravention of World Health Organization guidelines. 146/

209. Prostitutes are very dependent on the various organizational and structural edifices which profit from their labour, such as those who can manipulate the law (police officers, brothel owners, immigration officials), those who control the advertising and entertainment industries, including the pornographic and mail-order bride industries, or those who control travel agencies, airlines, restaurants and sex-shops. The violence they face from these groups ranges from beatings for refusing clients to withholding clients, and therefore income, from CSWs who have erred in some way. Women prostitutes report that clients ask them to perform bizarre, humiliating and painful acts derived in part from pornographic literature and in part from the licence afforded them by the private, anonymous nature of commercial sex. The international market for prostitution, in part owing to the fear of HIV/AIDS, has been marked in recent years by the demand for "fresh" or virgin girls. The premium placed on virginity has created a climate in which older commercial sex workers must portray themselves as something other than what they are. 147/ The urban experienced CSW increasingly finds her vocational position threatened by young rural naive girls who are fast becoming the CSW of choice for many clients, and she is consequently forced into situations of greater dependence on these abusive structural supports.

210. Trafficking of women and children for the purposes of prostitution is a critical barometer of the nature of abuse that takes place within the sex industry. The rise in trafficking of women in many parts of the world is linked, among other things, to the increasing fear of HIV/AIDS (and the perceived need therefore to recruit untainted blood), the increase of sex tourism deriving from the pressure on developing countries to generate more foreign currency income, and continuing societal condonation of the imperatives of male sexuality. 148/

211. Women who are trafficked are by and large not aware of what awaits them; some women contact pimps or managers directly, but the larger percentage of trafficked women are sold into bondage by their parents, husbands, boyfriends,

or they are deceived or coerced, sometimes by friends or elders in the village. The "mail-order bride-business" accounts for some percentage of trafficking in women: women who believe they will find a wealthy husband and a safe family environment in another country may in fact be forced into prostitution upon arrival. 149/

212. Women who are trafficked into other countries for the purpose of prostitution generally work out of the most abusive of brothels, bars and salons. The conditions faced by these women are appalling. Asia Watch and the Women's Rights Group conducted a comprehensive study of girls and women trafficked from Burma into Thailand. 150/ The study found that women trafficked into brothels in Thailand work between 10 and 14 hours a day, with an average of 10 clients per day. The average size of the rooms these women live and work out of measure two by two and a half metres. If they are lucky, they get a few days off during menstruation. The workers generally receive a little over a dollar a day from the brothel owner, although the clients pay much more directly to the brothel owner. They are expected to pay for their food and lodgings out of this money. Many of these women are held in debt-bondage as they are expected to repay the amount forwarded to their parents by the recruiting agents. They may also be illegally confined to the brothels, through the practice of withholding passports or through more physically abusive means. In one known incident, five girl prostitutes in Thailand were burned to death in a brothel because they had been chained to their beds and could not get away.

213. Of the 30 women interviewed by Asia Watch, only two were above 20 years of age. The report cites accounts of 10-year-old girls who pass out from pain when raped by clients. In Thailand, the sexual intercourse experienced by girls 15 years or younger always constitutes statutory rape. Instead of punishing the rapist, i.e. the client or the brothel owner as an accomplice to the rape, in Thailand the girls who do complain are often arrested and sent back to the brothel upon payment of a fine. Women who are trafficked are usually smuggled across borders with the bribed complicity of the border guards. Victims of trafficking report extensive police usage of brothels for free. Their status as illegal immigrants is further disabling, rendering them highly vulnerable to sexual, economic and physical abuse. Health care is virtually non-existent for them, except for the provision of birth control pills or depo provera. 151/ Rehabilitation and deportation centres often serve as scouting grounds for corrupt police and brothel owners to recruit sex workers at inexpensive rates. 152/

(c) Legislation

214. Most States have either outlawed prostitution or have imposed heavy regulations on the practice of prostitution. 153/ However, virtually no model legislation adopted by any one State has adequately or effectively been able to deal with the problems related to the practice of prostitution, and the commercial sex industry has continued to thrive, undeterred by legal hurdles. The stigma attached to prostitutes makes them very reluctant to come forward and register with the authorities. Their clients likewise feel freer in clandestine conditions. The commercial sex industry, therefore, has many

incentives for evading the law, and because prostitution functions mainly in the darker spaces of a community, relying on word of mouth, coded language and community and State complicity, evading the law has not been difficult.

215. Several international instruments address the issue of prostitution directly. States should be actively encouraged to accede to the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Discrimination Against Women. Article 6 of this Convention, in particular, obligates States parties to take all appropriate measures to "suppress all forms of traffic in women and exploitation of prostitution of women". Such measures could involve enacting legislation to prosecute all those involved in the exploitative organizations surrounding prostitution and trafficking, including brothel owners, pimps, airlines; increasing the statutory age for rape to 18, and actively prosecuting clients who violate this law; and establishing commissions of inquiry to investigate allegations of abuse and complicity by government agents.

216. The Special Rapporteur also notes with interest the work of the Working Group on Contemporary Forms of Slavery of the Sub-Commission on Prevention of Discrimination and Protection of Minorities in connection with a draft programme of action for prevention of traffic in persons and the exploitation of the prostitution of others (E/CN.4/1994/71, annex) and calls upon the Commission on Human Rights to consider the draft programme at its present session.

217. States that have not acceded to the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others should urgently be encouraged to do so. The Convention calls on States parties to protect all persons from the abuses of trafficking and exploitation of prostitution. It mandates that States parties make suitable provisions for the care and maintenance of victims, repatriate victims of trafficking only with the agreement of the State of destination, and bear the cost of repatriation to a certain extent when the victim is unable to do so (art. 19).

218. States should pay particular attention to stopping the recruitment of young girls into prostitution, by monitoring carefully employment and recruitment agencies, as well as advertising and pornography agencies. The Convention on the Rights of the Child requires States to take all appropriate "legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse". The growing trend of forcing younger and younger girls into prostitution is a problem that needs urgent and serious affirmative action. The reports of the Special Rapporteur on the sale of children, child prostitution and child pornography have raised awareness of the pervasive nature of these practices. 154/

219. Trafficking and the abuse and exploitation of prostitutes does constitute violence against women. Many groups argue that the only way to control and regulate such violence is to legalize prostitution. Legislation allows for the enactment of health and labour regimes which would protect the CSW. However, most societies and cultures do not accept this position. They

believe that moral condemnation and criminalizing activity associated with prostitution and trafficking are the only means available for eradicating violence against women in this sphere.

4. Violence against women migrant workers

(a) General description

220. Migrant women workers, whether internal or international, represent an upward trend in women's economic activity. Although such women are typically lower paid than their male counterparts, they are increasingly becoming the most important, if not the only, breadwinners in their families. 155/ It has been estimated that the female migrant population has outnumbered the male migrant population by wide margins since the 1980s. Of international female migrant workers 72 per cent are found in Asia, 11 per cent in Europe, 8 per cent in North America and 9 per cent elsewhere. 156/

221. Poverty alleviation is the principal motivating factor for migrant workers, who often earn several times more in the host country than they could earn at home. There are compelling advantages which accrue to both the sending and receiving Governments of migrant workers as well. The foreign exchange remittances by international female migrant workers are of great importance to the Governments of the sending countries, which tend to be poorer than the receiving countries. In Sri Lanka, for instance, the foreign exchange remittances repatriated by female migrant workers have been estimated to be the second most important source of foreign exchange income to the Government. 157/ The receiving country is usually in need of a specific form of labour for which there is either no willing or available labour power. These interests constitute the basis for the phenomenon of international migrant workers.

222. The profile of the female migrant labour force is quite varied, ranging from skilled labour (nurses, secretaries, teachers) to unskilled labour (domestic workers, waitresses, low-level factory workers). The skilled labour force is better educated and more highly remunerated, paralleling the same phenomenon in the non-migrant labour force, although the national worker tends to be better paid than the non-national worker. While certain forms of abuse are universally experienced by women, the unskilled worker, and in particular the domestic worker, experiences violence directed against her to a greater degree and of a different kind.

223. Internal unskilled migrants tend to travel either with their husband and children or in groups of men and women. Language is usually not a problem and they are better protected against violence from persons outside their migrant group. 158/ International unskilled migrants do not have all of these advantages. They are very often working illegally, the language is foreign, and they are isolated from their social group. Although studies show that the literacy rate among foreign domestic workers is higher than the literacy rate of their national counterparts, the majority of migrant women are not well educated enough to be effectively apprised of their rights. 159/ Their position in the receiving country is thus very vulnerable, often in clandestine conditions, at the mercy of the employer and the recruitment agencies.

(b) Nature of the abuse

224. The nature of the abuse faced by international female migrants varies. Its chronic under-reporting (and under-investigation of reported cases) makes it very difficult to document with any certainty the extent of the problem. The abuses that are reported fall into two categories: non-physical abuse and physical violence. The nature of these abuses is outlined below.

(i) Non-physical abuse

225. A widely reported form of non-physical abuse is the common practice of withholding the migrant woman's passport or documentation papers. Employers claim to be protecting the woman (she might lose the passport), but whatever the motivation for this practice may be, it has the effect of entrapping the woman inside her employer's compound, especially in countries which require aliens to carry evidence of their legal status on them at all times. For the woman who seeks refuge in her embassy when fleeing the employer's house, she has no proof of citizenship with which to claim her right to protection.

226. Labour laws do not apply to the illegal worker and some countries explicitly exclude legal domestic workers from the labour laws altogether. Migrant women report that employers withhold their wages or pay them substantially less than originally agreed, holding them effectively in debt bondage. Domestic workers and "sweat-shop" workers, in particular, report long working hours; in one study, 72 per cent of domestic workers reported having no days off at all. 160/ Domestic workers also report under-feeding by employers; often they are allowed only left-overs. These common abuses create conditions under which women suffer assault in isolation and allow employers to behave with near total impunity.

(ii) Physical violence

227. One of the most comprehensive reports documenting physical abuse against migrant women is the 1992 report of Middle East Watch on the mistreatment of Asian maids in Kuwait. 161/ The nature of the problems documented in this report are similar to those documented in other reports on other regions, such as in Hong Kong, Singapore and parts of North Africa, although it is important to note that incidents of such abuse have increased dramatically in post-war Kuwait, perhaps as a result of a rise in hostility towards foreigners.

228. Of the 60 cases investigated by Middle East Watch, two thirds of the cases concerned physical abuse by the employer, including kicking, beating, slapping, punching and hair-pulling. One third of these 60 cases directly involved the rape or sexual assault of maids. 162/ Often the beatings accompany the rape or attempted rape. In the most egregious cases, the physical and mental trauma accompanying the assault or rape was severe enough to require hospitalization. 163/ The Middle East Watch report noted that while not all Asian maids suffered at the hands of their Kuwaiti employers, such abuses were disturbingly prevalent.

229. Female migrant workers also suffer often at the hands of the police. There are documented cases of women who report rape by employers being sent back by the police to the employer or being physically or sexually assaulted

at the police station. Women who lodge such complaints are often detained at the police station for arbitrary lengths of time. Migrant women in Kuwait who try to flee their employers' houses and injure themselves in the process have been charged with violating the Kuwaiti law against suicide. 164/ The police also notoriously do not follow up on most of the cases that are reported to them.

(c) Legislation

230. Both sending and receiving Governments have encountered difficulties in regulating the flow of migrant workers. The bulk of migrant workers are recruited through private, unregistered agencies, which evade immigration and labour laws with ease. 165/ Countries such as Bangladesh and India, that have tried to restrict exit for nationals seeking to migrate, have experienced instead a mass illegal exodus of workers, despite all efforts. Receiving countries, whose own national labour force is unwilling to work in the low-prestige, low-pay jobs typically occupied by migrant workers, have little incentive to regulate the conditions of the migrant workers. The attempts at regularization in various European countries have failed to legalize more than a handful of migrant workers; most migrants do not surface for fear of deportation. Italy has tried to crack down on the illegal labour force by instituting fines and prison terms; this approach has been criticized because it is difficult to enforce and because it punishes the vulnerable labourer rather than the employer.

231. In recent years, a few countries have made efforts to reach out to the female migrant population. In 1981, Canada instituted the Foreign Domestic Worker's Programme (FDW) as part of its broader Employment Authorization Programme. The purpose of the FDW was to regulate better the employment of foreign domestic workers, specifically through contracts detailing issues such as wage rates, hours and benefits. The FDW also simplified the process by which migrants could acquire permanent legal resident status, by requiring only two years of consecutive work with a specific employer doing a specific job. While the FDW represents a significant step forward in the process of legitimizing and protecting migrant domestic workers, it has also been charged with artificially forcing wages down and restricting mobility in an attempt to keep the national labour force from being attracted to domestic work.

232. The Government of the Philippines under President Corazon Aquino established the Overseas Workers Welfare Administration (OWWA), which is charged, inter alia, with regulating recruitment agencies and providing orientation to migrants prior to their departure. The Government also pledged to create 1.1 million jobs annually, to increase the availability of affordable housing, and to encourage the development of income-generating cooperatives. The Government of Mauritius has recently established the Foreign Labour Inspection Squad (as of 21 February 1994) which, like OWWA, is charged with regulating recruitment agencies and reaching out to migrant workers before they leave. These are important efforts which actively try to support the migrant woman, rather than threatening her into clandestine conditions.

(d) International instruments

233. There are many international instruments which can be mobilized to prevent abuse against migrant women. These instruments basically recognize the duty of the sending State to apprise its citizens of their rights and obligations, and the duty of the receiving State to assure human rights protection to the citizens of other countries. There follows below a list of recommendations deriving in part from these international instruments and in part from reports prepared by human rights organizations.

(i) States must act affirmatively to regulate private recruitment agencies, which constitute the original site from which migrant women are drawn. Administrative agencies, such as OWWA in the Philippines, should be established for this purpose. 166/

(ii) Both sending and receiving countries should establish outreach programmes for migrant women, providing legal, social and educational assistance.

(iii) Police stations should have trained female officers charged with helping migrant women who come in to report cases of abuse. Migrant women held in detention should come into contact with male officers only when a female officer is also present.

(iv) Embassies should be equipped to help their migrant citizens effectively, both when they seek refuge and when they are held in custody. 167/

(v) Migrant women should not be excluded from the protection of the national minimum labour standards. Employers should be actively prosecuted for violating national labour standards.

(vi) Further, States should ensure that their national labour standards conform with the various guidelines and recommendations put forth by the International Labour Organisation. 168/

(vii) A basic problem underlying the presence of abuse is Government indifference or inaction. Many States have protective laws which are not enforced. States should, therefore, be held accountable for such inaction.

(viii) Trade unions should be encouraged to help realize the rights of migrant women.

(ix) The General Assembly at its forty-eighth session in December 1993 adopted resolution 48/110, entitled "Violence against women migrant workers", in which, called upon all countries, particularly the sending and receiving States, to cooperate in taking appropriate steps to ensure that the rights of women migrant workers were protected. The General Assembly also called upon competent bodies and specialized agencies of the United Nations system, other intergovernmental organizations and non-governmental organizations to inform the Secretary-General of the extent of the problem of violence against women migrant workers and to recommend further measures to implement the purposes of the resolution. This last provision is noteworthy and concerned groups and agencies who have relevant information should actively be encouraged to report to the Secretary-General on a regular basis.

234. The economic interests that lead to migration are compelling; migration cannot be stopped, nor should it be prohibited. Rather than trying to control migration, efforts should be directed at providing maximum protection for migrant women. Providing effective legal mechanisms by which such migrant women can be officially recognized and counted as a population equally deserving of State protection must be the starting point for effective redress of abuse against this vulnerable group.

5. Pornography

(a) Introduction

235. Pornography has become a major issue for women's movements all over the world. Many feminists view pornography as the very essence of patriarchy; indeed, the theory is advanced that it is the mainstay of male power and female subjugation. Pornography eroticizes domination 169/ and power differentiation. In other words pornography makes power sexual, it also turns women's subordination into a natural phenomenon. Pornography sexualizes rape, battery, sexual harassment, prostitution and child sexual abuse; it thereby celebrates, promotes, authorizes and legitimates them.

236. There is a school of thought that certain types of pornography are about sexual expression and identity. Some argue that such pornography or erotica liberate female sexuality. However, certain prominent writers argue that what pornography does goes beyond its content: it eroticizes hierarchy, it sexualizes inequality. From this perspective pornography is neither harmless fantasy nor a corrupt and confused misrepresentation of an otherwise natural and healthy sexual situation. It institutionalizes the sexuality of male supremacy, fusing the eroticization of dominance and submission with the social construction of males and females. Thus, pornography in itself represents a form of violence against women by constructing a situation which glamorizes the degradation and maltreatment of women, and asserts their subordinate function as mere receptacles for male lust. 170/

237. Furthermore, it would also appear that exposure to certain types of pornography actually causes more violence against women. The first instances of such violence occur with the making of the pornography. Many of the models are raped, killed and threatened in the making of the material. In addition, experimental research on pornography shows that certain materials cause measurable harm to women through increasing men's propensity to be violent. They significantly increase attitudinal measures known to correlate with rape and self-reports of aggressive acts - measures such as hostility towards women, propensity to rape, condoning rape, and predicting that one would rape or force sex on a woman if one knew one would not get caught. In addition to the experimental evidence, there is a great deal of anecdotal evidence which seems to point to a causative relationship between the consumption of pornography and sexual violence. 171/

(b) Free speech

238. The most contentious issue faced by those who wish to eliminate pornography is how to define pornography in a manner that does not deny free speech and artistic creativity. In jurisdictions within the United States of America, the free speech argument has been more persuasive than arguments which see pornography as violence against women. The Williams Committee on Obscenity and Film Censorship (1979) considered that for material to be pornographic it must have a certain function or intention, to arouse its audience sexually, and also a certain content, explicit representations of sexual material (organs, postures, activity etc.). "A work has to have both this function and this content to be a piece of pornography." 172/

239. In this definition, "intention" and "explicitness" remain the key to pornography. "Explicitness" is the only thing that can be measured relatively objectively. The intention of the author or photographer is, on the other hand, hard to prove and the sexual arousal of the consuming public cannot seriously be "measured".

240. Such definitions fail to address the issue that most pornography represents a form of violence against women and that the evidence shows that it is directly causative of further violence against women. In this context the definition put forward by Andrea Dworkin and Catherine MacKinnon provided a major breakthrough in defining pornography by conceptualizing it as "a practice of sex discrimination which sexualizes the subordination of women and which eroticizes violence against women". They then define pornography specifically, descriptively and objectively for what it depicts and communicates about the sexualized subordination of women:

> "We define pornography as the sexually explicit subordination of women through pictures or words that also includes women dehumanized as sexual objects, things, or commodities, enjoying pain or humiliation or rape, being tied up, cut up, mutilated, bruised, or physically hurt, in postures of sexual submission or servility or display, reduced to body parts, penetrated by objects or animals, or presented in scenarios of degradation, torture, injury, shown as filthy or inferior, bleeding, bruised or hurt in a context that makes these conditions sexual." 173/

241. Such a definition squarely locates the issue of pornography in the area of violence against women.

(c) Legislation

242. In most countries, there is in fact no legislation against pornography. What there is instead is legislation against "obscenity" and "indecency". Material is usually taken to be obscene if, taken as a whole, it has the effect of corrupting and depraving persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it. Attention is focused on the possible harm to the male consumer, whilst the wider notion of harm, that of violence against women,

goes unaddressed. It is, therefore, necessary to find new ways of legislating which address the issue of pornography in terms of the concerns relating to the violent subordination of women.

(d) Criminal law - incitement to sexual hatred

243. In the United Kingdom, the Campaign against Pornography and Censorship (CPC), launched in 1989, took up the campaign for legislating against pornography on the grounds of incitement to sexual hatred and violence, using the United Kingdom Race Relations Act 1976 as a model. The incitement section of the Act is criminal legislation which provides a precedent for restraints on freedom of expression that can be oppressive and harmful to a particular group on the grounds of race. It could also be used as a model for restraints on freedom of expression that, as in the case of pornography, can be harmful and oppressive to a particular group on the grounds of gender. Legislation against pornography is then possible on the grounds that it can act as an "incitement to sexual hatred" and "contribute to acts of violence against women in the form of sexual abuse, sexual assault, sexual harassment, rape and murder", as well as to sexism and sex discrimination. The incitement legislation, being criminal legislation, puts the power of enforcement in the hands of the police and the "State". The potential for abuse in this form of legislation, however, would be virtually eliminated, if there were a concrete, specific and unambiguous definition of pornography.

(e) Civil law - the sex discrimination model

244. CPC also proposed legislation against pornography as a form of discrimination against women on the grounds of sex. Civil sex discrimination legislation against pornography would enable women to take action on grounds of harm done to them by pornography. It would enable women to take a stand on their own behalf against the pornography industry and enable them to obtain compensation for harm or injury.

245. Catherine Mackinnon and Andrea Dworkin attempted a similar strategy by drawing up the Minneapolis Ordinance in the United States of America in 1983. They argued that pornography, as defined by them (see para. 240 above), violated women's civil rights and the right not to be discriminated against. The legal process would necessitate an individual woman making a complaint that pornography had infringed her rights or her ability to exercise, or benefit from, equal opportunities.

246. The above strategy has been followed in Australia where in a recent case, two women who had been employed in a construction site complained of sex discrimination when their male colleagues hung pornographic posters on their "crib" walls. They sued their employers and the trade union and accused them of aiding and abetting these acts of sex discrimination. The Tribunal found for the women and allowed them a measure of compensation for the violation of their rights. 174/ This trend towards seeing pornography as an act of sex discrimination is an important landmark in the struggle for women's equality and for the elimination of violence against women.

(f) Child pornography

247. The problem of child pornography, often involving the girl child, has been an important concern of the Commission on Human Rights, reflected in the reports of the Special Rapporteur on the sale of children, child prostitution and child pornography, Mr. Vitit Muntarbhorn, as well as in the reports of the Working Group on Contemporary Forms of Slavery of the Sub-Commission. The Special Rapporteur on the sale of children urges that not only the production and distribution of child pornography but also its possession should be criminalized. 175/

C. Violence perpetrated or condoned by the State

1. Custodial violence against women

(a) Nature of the abuse

248. Custodial violence against women is a widespread and troubling phenomenon. Abuse of power by government agents, usually police or military personnel, under non-transparent and highly unequal conditions, together with the impunity accorded to such agents, constitute the bases on which custodial violence ferments and grows. Governmental anxiety to apprehend alleged perpetrators, especially those who are perceived as threats to national security, national identity and national morality creates a general climate of non-accountability. Governments using military force to suppress their people are particularly unresponsive to charges of military custodial violence. 176/

249. Custodial violence is indifferent to the nature of the alleged criminal activity under which women are apprehended. Women are vulnerable to abuse whether accused of petty theft, sexually deviant behaviour or affiliation with a "wanted" criminal. The nature of the abuse ranges from physical or verbal harassment and humiliation to sexual and physical torture. Amnesty International reports that thousands of women held in custody are routinely raped in police detention centres worldwide. Torture to extract confessions or information is taking increasingly sophisticated and abhorrent forms, from rape with electrically charged metal rods to the refined use of psychotropic drugs. 177/ The psychological and gynaecological sequelae of these extreme forms of custodial violence are further compounded by inadequate or unavailable medical treatment.

250. Prolonged illegal detentions and deprivation of food, sleep and water are also routine abuses faced by women in police custody. Even in States which have obligated themselves to provide legal counsel to accused persons, attorneys are not made available to them. Many detained women, especially in countries with lower literacy rates, do not know which law they have been detained under or what the alleged offence is. According to a study carried out by Human Rights Watch, "out of 90 women interviewed in a jail in Pakistan, 91 per cent did not know under what law they had been accused. Sixty-two per cent had no legal assistance whatsoever, and of those who had lawyers almost half had never met them". 178/

251. Governments fighting armed opposition movements are known to use torture routinely as a means of extracting information. Women detained in police or military custody in many countries are commonly subjected to beatings, burns, shocks, rape and molestation. "Disappearances" and extra-judicial killings at the hands of custodial authorities have been reported in Afghanistan, Brazil, Burundi, Cambodia, Chad, Chile, India, Lebanon, Myanmar, Sri Lanka and Uganda. 179/ A "disappearance" is defined as a situation in which there exists reasonable grounds to believe that a person has been taken into custody by government agents despite government statements to the contrary. The whereabouts and fate of the abductee are kept concealed. Defining the boundaries of custody or police detention is difficult in this regard because it is nearly impossible to prove that government agents are responsible for the abduction. Persons released after temporary disappearances report that while the abduction appeared to be carried out by government agents, the further interrogation and torture were not clearly attributable to the military or police.

252. The emergence of "special laws" in certain countries has led to an increase in custodial abuse of women. In 1980, there were 70 women in jail in all of Pakistan; by 1987, there were 125 women in detention in the state of Punjab alone, and 91 in the state of Sindh. Most of these women faced trial under Pakistan's Hudood Ordinance. 180/ A 1988 survey showed that 78 per cent of female detainees alleged maltreatment at the hands of the police; 72 per cent claimed sexual abuse. 181/ The Hudood Ordinances in Pakistan make extra-marital sex, which is defined to include rape, illegal, non-compoundable, non-bailable and punishable by death. 182/ Under them, women can be arrested without a warrant and detained without charge for prolonged periods in the absence of female officers. Women detainees have reported sexual torture, including having chilies forced into their vaginas with sticks by police officers in attempts to get them to confess to adultery. 183/ Gang rape, beatings, molestation and sexual harassment are common treatment for women accused of sexually deviant behaviour. Such custodial violence passes undetected because medical examinations are not provided.

253. The extent of police mistreatment both in detention settings and in non-custodial settings in India has received much attention lately. It provides a good example of the widespread nature of the abuse. In September 1989, the Rajasthani government admitted that police officers were under trial in 50 rape cases. In New Delhi, 14 cases of rape involving 20 police officers at 12 different police stations were reported between [illegible] January and 11 February 1990. 184/

254. Preventive detention laws are increasingly becoming the legal instruments through which police derive their impunity. The Terrorist and Disruptive Activities (Prevention) Act in India, the Anti-Subversion Law in Indonesia, the Public Security Law in the Republic of Korea, the Prevention of Terrorism Act [illegible] Sri Lanka, to name just a few, are all instruments which allow police to detain persons who "might" commit crimes for prolonged periods without trial. Such legislation, by virtue of the wide and unchecked latitude given to police, creates a dangerous space within which the treatment of detainees cannot be questioned. The length of time and the highly obscure nature of

these detentions pose a special threat for women who may get pregnant following police rape and be forced to go through pregnancy without medical care.

255. Police complicity in prostitution and trafficking rings throughout the world also accounts for some custodial violence. 185/ Police frequent brothels and threaten prostitutes with detention or deportation in order to secure free sexual services. The police involvement in the trafficking of female prostitutes into Thailand and the abuse these women suffer at the hands of the police has been well documented by Asia Watch. 186/ Women who are trafficked into the Middle East from Asia also face abuse at the hands of the police, ranging from rape to physical assault, when simply appearing at the police station to lodge a complaint. 187/

(b) Legislation

256. Many countries have penal and jail codes which generally conform, with exceptions, to the Standard Minimum Rules on the Treatment of Prisoners, adopted in 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders. These codes are, however, rarely followed. In the context of violence against women in custody, the Jail Code of Bangladesh stands out as a commendable piece of legislation. Under the Jail Code, male and female prisoners are segregated and male officers are barred access to the women's quarters. Women have to be chaperoned by a female officer when being questioned or examined by a male officer. Such protective measures can go a long way towards redressing the violence women face in custody. In India, many states have created special police cells to deal specifically with women in custody, in large part as the result of pressure from women's advocacy groups, although the conditions of the cells themselves have not been improved.

257. Bringing state legislation into conformity with the guidelines set forth in the Standard Minimum Rules on the Treatment of Prisoners is a necessary step in the amelioration of violence against women in custody. These Rules require the segregation of men and women, and the segregation of pre-trial and convicted persons. They further require that women in custody be guarded by female officers and interrogated only in the presence of at least one other female officer. Medical care and examinations as outlined in the Standard Minimum Rules must be followed in order to ensure that abuse of women is detected early on. Pre-natal and post-natal care is also expressly provided for in the Standard Minimum Rules.

258. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly in its resolution 43/173 of 9 December 1988, also sets forth rules for the prevention and detection of ill-treatment of those in custody. Other relevant international instruments are the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights, and the Convention on the Elimination of All Forms of Discrimination against Women.

259. States should be encouraged to become parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. There should also be constitutional protection against torture. In addition, States must play an active role in prosecuting authorities accused of abuse of women detainees. State protection of its agents is the single most important factor in the continuance of incidences of abuse of women detainees. Especially in countries witnessing internal strife, where police and military authorities are given a broad mandate, governmental vigilance must be increased to redress abuse of power. Legal instruments which make it easier to press claims against government agents and which allow for meaningful remedies should be passed by all States, in which police misconduct occurs. An active judiciary which protects the rights of the citizens is also necessary if the right to be free from torture is to be vindicated.

(c) Custodial rape

250. Recent legislation in India with regard to custodial rape, that is rape in any state owned institution, shifts the burden of criminal proof so that the State now has the responsibility to show that the alleged rape did not take place. This dramatic piece of legislation was a response to the agitation of India's many women's groups. This approach is based on the belief that state institutions which serve the public interest must be beyond reproach, so much so, that even the rules of evidence have been changed in order to ensure safety to women when they are placed in the custody of the State.

2. Violence against women in situations of armed conflict

(a) General

261. Rape of women and girls in situations of armed conflict, whether civil or international, constitutes by definition a grave breach of international human rights and humanitarian law. The Fourth Geneva Convention of 1949 states that "Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault" (art. 27). Article 147 includes in the list of acts constituting grave breaches of the Convention "wilfully causing great suffering or serious injury to body or health". The International Committee of the Red Cross has interpreted this to include rape. 188/ In addition, acts of sexual assault against women are outlawed by international humanitarian law through normative provisions prohibiting violence against the physical integrity, dignity and security of the person. They include common article 3 of the Geneva Conventions, in so far as it prohibits "violence to life and person", "cruel treatment", "torture" or "outrages upon personal dignity", and Protocol II Additional to the Geneva Conventions, relating to the protection of non-international armed conflicts, which expressly forbids "outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault" (art. 4.2 (e)).

262. The Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in June 1993, states:

> "Violations of the human rights of women in situations of armed conflict are violations of the fundamental principles of international human rights and humanitarian law. All violations of this kind, including in particular murder, systematic rape, sexual slavery, and forced pregnancy, require a particularly effective response" (Part II, para. 38).

263. Yet, although rape is one of the most widely used types of violence against women and girls, it remains the least condemned war crime; throughout history, the rape of hundreds of thousands of women and children in all regions of the world has been a bitter reality.

264. At the international level, with regard to the prosecution of war crimes, there seems to be a newly emerging trend, namely the setting up of international expert commissions and tribunals. The international community has adopted a more institutionalized response to the atrocities committed in the territories of the former Yugoslavia and in Rwanda in particular. The precursors to such tribunals were the International Military Tribunal at Nuremberg and the International Military Tribunal for the Far East (Tokyo Tribunal). Although rape as a war crime was not an issue before these early tribunals, they set the precedent for international prosecution of alleged war crimes.

265. In the case of the former Yugoslavia, the United Nations Security Council established first a commission of experts pursuant to its resolution 780 (1992) and then the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991. In the context of the armed conflict in Rwanda, a commission of experts was established pursuant to Security Council resolution 935 (1994) to examine and analyse grave violations of international humanitarian law in Rwanda. It is imperative that such tribunals make a special effort to investigate allegations of and to prosecute gender-specific war crimes of violence against women.

266. The Special Rapporteur notes with interest that the Commission of Experts mandated to obtain and analyse information on violations of international humanitarian law in the former Yugoslavia conducted investigations which encompassed violations of international humanitarian law against persons, including extrajudicial executions, torture and other violations of international humanitarian law, particularly in detention camps. Special emphasis was given in these investigations to allegations of rape and sexual assault.

267. Furthermore, the report of the Secretary-General pursuant to paragraph 2 of Security Council resolution 808 (1993), discussing the competence of the International Tribunal for the former Yugoslavia, refers to crimes against humanity as being inhumane acts of a very serious nature, such as wilful killing, torture or rape, committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds, and states that "in the conflict in the territory of the former Yugoslavia, such inhuman acts have taken the form of so-called 'ethnic

cleansing' and widespread and systematic rape and other forms of sexual assault, including forced prostitution". 189/ These developments are most welcome in the context of prosecution for international war crimes.

(b) Nature of abuse

268. In recent times, there has been extensive documentation of violence against women in times of armed conflict. United Nations documentation on the former Yugoslavia is a case in point. In the spring of 1993, an investigation committee of the European Community stated that the mass rape and/or sexual torture of women in Bosnia and Herzegovina must be considered systematic, ordered acts and an important element of Serb warfare strategy. Additionally, the establishment for the first time of camps explicitly intended for sexual torture marks a definite escalation of violence against women in armed conflicts. The final report of the Commission of Experts identified five patterns of rape and sexual assault and concluded that, in Bosnia and Herzegovina, "these patterns strongly suggest that a systematic rape policy existed in certain areas ... practices of 'ethnic cleansing', sexual assault and rape were carried out by some parties so systematically that they strongly appear to be the product of a policy". 190/ Rape is, therefore, evidently widely used as another repugnant instrument for ethnic cleansing and for increasing inter-ethnic hatred.

269. In March 1994, the United Nations/Organization of American States International Civilian Mission in Haiti issued a press release condemning the use of rape against women as an unacceptable violation of the rights of Haitian women, which appear to form an integral part of the political violence and terror, in which armed civilian auxiliaries, "attachés", members of the Front for the Advancement and Progress of Haiti and the armed forces of Haiti had all been implicated. 191/

270. Most recently, the massacres, the hunting of survivors, the attacks on schools and churches, the rape and abduction of women and girls and violence against children characterizing the armed conflict in Rwanda have all been described in first-hand testimonies. According to a detailed report on the situation, "soldiers and militiamen raided homes, hospitals and camps for the displaced, looking for Tutsi women to rape. Girls as young as five have been raped. Some women and girls were macheted and then raped immediately afterwards, while others were allegedly gang raped, sometimes in public places. Some were acquired as a concubine or a second 'wife'. Fearful of death, many young women saw surrender as the only way to survive". 192/

271. In addition, human rights groups and non-governmental organizations have extensively documented other cases of violence against women in situations of armed conflict.

(a) During the armed conflict in Bangladesh in 1971, it is estimated that 200,000 civilian women and girls were victims of rape committed by Pakistani soldiers. 193/

(b) During 1992 alone, 882 women were reportedly gang raped by Indian security forces in Jammu and Kashmir. 194/ Militant groups in Kashmir have also been accused of using rape as an instrument of armed struggle.

(c) In Peru, rape of women by security forces is a common practice in the ongoing armed conflict between the Communist Party of Peru - Shining Path - and government counter-insurgency forces. 195/

(d) In Myanmar, in 1992, government troops raped women in a Rohingya Muslim village after the men had been inducted into forced labour. 196/

272. However, until recently the silence over the issue of rape in wartime has denied the historical meaning of rape and its structural importance in gender relations. Public discussion on the issue of rape in wartime took place for the first time in 1992, when reports were received of the rape and deliberate impregnation of thousands of women whose rights had been violated by all parties to the conflict in the territories of the former Yugoslavia.

273. For the first time also, after nearly 50 years, Korean women survivors of the Second World War used as "comfort women" by the Japanese imperial forces have broken their silence and come forward to tell their stories. It is estimated that more than 200,000 Asian women, mainly Koreans, were forcibly recruited by the Japanese army command to serve as sexual slaves of soldiers in brothels, so-called "military comfort houses".

(c) Motives

274. The underlying motives for rape in wartime should be looked at closely in order to recognize the scope of this extreme act of violence against women perpetrated by sexual means, as well as to understand the gravity of the situation at present, when the systematic and deliberate use of rape as a weapon of war marks an escalation in violence against women worldwide.

275. Rape is used as an instrument to exert violence, 197/ possibly as a manifestation of anger, in order to punish, intimidate, coerce, humiliate and degrade. In one human rights report concerning rape in internal armed conflict, it is stated that:

> "reported cases often involve the insertion of foreign objects into the vagina and anus combined with other forms of torture including electric shock to the genitals and breasts; rape of pregnant women and of minors; and gang rape by police and security force personnel. Often women are raped while blindfolded, so they cannot identify their attackers. Usually, they are told they or their family members will be killed if they report the rape". 198/

276. In addition, culturally and socially conditioned links between male sexuality, virility, potency and violence have been observed: especially in the case of gang rape, the perpetrators are generally seeking to prove their masculine identity *vis-à-vis* the woman, as well as themselves. This coincides with the fact that the occurrence of rape is particularly high in situations where male power has become unstable. In these cases, rape may be committed

because a violation of the gender stereotype is perceived by the aggressor, i.e. the woman poses a threat to the man by being politically active, engaging in resistance movements or propaganda, so that rape essentially constitutes a sexual punishment for the trespass of a perceived gender boundary. 199/

277. Rape in situations of armed conflict, however, may essentially differ in character, in the sense that it is not perceived as a sexual but rather an aggressive act, which gives satisfaction from the humiliation and helplessness of the victim. 200/ Naturally, individual incidents of rape are committed for personal motives of sexual fulfilment in times of conflict as in peace, but it is the increasing evidence of rape used on a massive scale and in a deliberate manner to further the causes of one warring faction over another that it is intended to analyse in this section.

278. Distinctive patterns of rape have been discernible in situations of armed conflict, whether in Korea during the Second World War or in the territories of the former Yugoslavia. Women are abused and raped by looters and civilians, sometimes people known to them, prior to military action in their own homes, or in public in their villages to serve as a deterrent for any resistance to the forthcoming military action, to suffocate dissent and to force collaboration. Upon the arrival of the military, the women are raped, sometimes killed and otherwise deported to detention camps. During deportation, women also may have to endure physical abuse. In the detention camps, they are once again raped and are sometimes required to serve as sexual slaves to the enemy soldiers, often having to endure other forms of sexual torture, beating and threats. Furthermore, the detention of women in hotels or similar facilities for the sole purpose of sexually entertaining soldiers, members of the camps and surrounding enemy communities has also been documented. 201/

279. A further characteristic of this atrocious practice is the use of rape as a method to terrorize civilian populations in villages and to force ethnic groups to leave. An escalation in the atrocities committed against women during armed conflicts is the practice of forced pregnancy and maternity. After being subjected to deliberate attempts to impregnate them, women are detained until it is too late for them to obtain an abortion, in an attempt to humiliate the ethnic group of the victim and to "dilute" it.

280. The raping of the women of a community, culture or nation is also conducted because of a belief that such rape is the symbolic rape of the body of that community, the destruction of the fundamental elements of a society and culture 202/ - "the ultimate humiliation of the male enemy". 203/ Women are victims in the fight for male honour. The inability to protect women's sexual purity is seen as an act of humiliation. 204/

281. Rape by enemy troops is also increasingly used as war propaganda. This sometimes leads to inflation of figures. The incidence of rape by one's own troops is diminished whereas the enemy troops' sins are exaggerated in order to incite hatred and aggression against them. Yet the number of reported cases of rape is never accurate because of the widespread fear of reporting incidents of rape and the social stigma associated with being raped. Severe traumatization, feelings of guilt and shame are accompanied by the fear of rejection by husband or family and by the fear of reprisals against themselves

and their families. Some victims of rape are driven to commit suicide as a result of all these consequences; others end up as prostitutes as their only way of survival after rejection by the family.

282. It has been found that a lack of trust in the judicial system and the national legislation and their effectiveness, as well as the fear of (publicly) awakening bad memories, are major reasons for silence. 205/ This distrust has largely been created by the condoning of this practice by commanding officers through inactivity, in most reported cases.

283. In his reports, the Special Rapporteur on the situation of human rights in the territory of the former Yugoslavia, Mr. Mazowiecki, has repeatedly emphasized that, in the case of Bosnia and Herzegovina, he "is not aware of any attempts by any of those in positions of power, either military or political, to stop the rapes". 206/ Similarly, the civil strife in Peru, as documented by Human Rights Watch, has always been characterized by the Government's failure to prosecute the agents of abuse and to guarantee women equal protection under the law. 207/

(d) Impunity

284. It is exactly this official failure to condemn or punish rape that gives it overt political sanction, which allows rape and other forms of sexual torture and ill-treatment to become tools of military strategy. 208/ In certain contexts, in situations of armed conflict, institutions and mechanisms of justice have completely broken down. This ensures a certain anarchy, and rape is one of the consequences.

285. The impunity described above is further proof of women's powerlessness against a State that turns a blind eye to rape. The sad reality is that where no one is held accountable for gross human rights abuses and impunity for perpetrators prevails, women have no protection against rape and no way of seeking redress after they have been assaulted.

(e) "Comfort women"

286. It is precisely this question of impunity that the former "comfort women" victims of the Second World War are addressing in their recent testimonies. 209/

287. Between 1932 and 1945, the Japanese imperial forces are reported to have practised a policy of systematic mobilization of women of colonized or occupied areas by force, pretext or kidnapping, in order to use them as sexual slaves for the armed forces. Most of the women were young girls between the ages of 11 and 20.

288. The "comfort women" or "jugun ianfu" had to endure multiple rape on an everyday basis in the "military comfort houses", which were strictly regulated by the military and set up in such places as north-east China or Manchuria, other parts of China, the Philippines, Korea, and the Dutch East Indies, Malaysia, Indonesia. Allegedly, soldiers were encouraged by their commanding officers to use the "comfort women" facilities rather than civilian brothels

"for the purpose of stabilizing soldiers' psychology, encouraging their spirit and protecting them from venereal infections", as well as a measure to prevent looting and widespread raping during military attacks on villages. 210/

289. It is only after having overcome their own sense of guilt and shame, as well as the social stigma associated with being a victim of rape, and only after the discovery of official documentary evidence in the Japanese national archives of the "comfort women" operation, that the few survivors have finally spoken out. They are demanding (a) disclosure by the Government of Japan of all records and information in its possession concerning the issue, (b) an official public apology recognizing Japanese guilt, (c) the provision of due reparation to the surviving victims and their families and (d) the punishment of the perpetrators. The Filipino and Korean "comfort women" have also filed law suits against the Government of Japan. These demands may be seen as setting the framework for future action with regard to State accountability for violence against women in times of armed conflict.

290. In July 1992, an apology was delivered by the Japanese Prime Minister, admitting that the Japanese military had forced tens of thousands of women to work as sex slaves in a vast network of Government-run brothels. However, the question of compensation has still to be determined and the act has still to be recognized as a crime under international humanitarian law.

291. Nearly 50 years have passed since the end of the Second World War. And yet this issue should not be considered a matter of the past but of today. It is a crucial question that would set a legal precedent at the international level for the prosecution of perpetrators of systematic rape and sexual slavery in times of armed conflict. A symbolic gesture of compensation would introduce a remedy of "compensation" for women victims of violence perpetrated during times of armed conflict.

292. The right to appropriate compensation under international law is well recognized. In the Chorzow Factory case, it was clearly established that any breach of an engagement invokes an obligation even though the precise amount of loss cannot be clearly established. 211/ The Special Rapporteur on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms, Mr. T. van Boven, has said "there is no doubt that the obligation to provide for compensation as a means to repair a wrongful act or a wrongful situation is a well established principle in international law". 212/

3. Refugees and displaced women

(a) General

293. An estimated 20 million people worldwide are refugees, and another estimated 24 million are internally displaced persons. 213/ Refugees and internally displaced persons are victims of persecution, human rights abuses and ethnic or militant conflict. They live outside the communal culture familiar to them, often in countries very different from their own. They also often face linguistic, racial and legal discrimination, and in many cases their physical and psychological security is not assured. Access to food, medicine, shelter and water is likewise usually very difficult to obtain, in

part owing to the exigencies of armed or hostile conflicts. 214/ Refugees pose very particular protection problems: in particular, they require protection from forced returns, from violent attacks, from unjustified and prolonged periods of detention and from exploitation by State and Government officials.

294. Women and children constitute approximately 80 per cent of most refugee populations. In addition to the fears and problems which they share in common with all refugees, women and girls are vulnerable to gender-based discrimination and gender-specific violence and exploitation. They are at risk in the communities from which they are fleeing, at risk during flight and at risk in the refugee camps where they seek protection. The male perpetrators of the exploitation and violence against refugee women include military personnel, immigration personnel, bandit or pirate groups, other male refugees and rival ethnic groups. Data on Vietnamese boat people of the Office of the United Nations High Commissioner for Refugees indicate that 39 per cent of the women among them are abducted and/or raped by pirates while at sea. 215/

295. Family structures, which could otherwise be a basis of stability and protection, are often radically altered in refugee situations. Separation from or loss of members of the family may lead to women becoming heads of household. With children to support and often no prior income generating experience, most of these women are dependent on external support structures, and are consequently more vulnerable to exploitation. Even when families remain intact during and after flight, the extraordinary circumstances of being refugees change the traditional dynamics of male-female relationships. Frustrations arising from such changes can result in increased incidence of domestic violence and depression. 216/ It has been noted, however, that despite these changes women continue to remain responsible for most domestic activities and, interestingly, become the principal conductors of preserving and passing on the culture they have taken with them. 217/

(b) Nature of the abuse

296. The persecution which leads women to seek asylum elsewhere often takes the form of sexual assault or torture; 218/ a common reason given by refugees as the cause for flight is to ensure the safety of the women. In one report it is alleged that for almost half of the Somali refugee women who reported being raped in the Kenyan refugee camps, rape was a factor in causing them to become refugees in the first instance. 219/ The use of rape as an instrument of persecution in the former Yugoslavia is well documented. 220/ Victims of such violations are reluctant to speak about their experiences, especially since rape victims continue to be stigmatized and faulted in most cultures. 221/ As with rape or sexual assaults in non-refugee populations, there generally are few hard facts to document in detail the problem of sexual violence against refugee women.

297. Women and girl refugees in flight from the terror of their communities are susceptible to exploitation, rape, abduction and murder. Women separated from male members of their families or travelling with small children are particularly vulnerable to sexual exploitation and manipulation. Piracy attacks involving killings, abductions, rape and sexual assault in

South-East Asia have received much attention because the attacks often focus directly on women. Young girls on board the vessel are raped or assaulted by the pirates while the other passengers are forced to stand by. Witnesses have reported boat people being forced to offer young girls and women as ransom in exchange for the lives of the other passengers. An anti-piracy programme set up by the Royal Thai Government and UNHCR from 1982 to 1991 did lead to a decrease in the number of such attacks, but also led the pirates to intensify attacks, killing everyone on board after raping the women to avoid eyewitness evidence against them. 222/ Women refugees in flight also report being held and raped repeatedly for weeks in border jails, 223/ and being abducted and prostituted against their will. 224/

298. Fears of sexual assault and rape do not subside once women reach the refugee camps. The security situation in the camps is generally unsatisfactory and in some cases very poor. On occasion women are raped on their way to communal toilets at night, or in their beds with their husbands and children nearby. Most camps are not lit, and night patrols to ensure greater protection are infrequent or absent. 225/ Some of the attacks in the Somali camps in Kenya are by Kenyan police; these attacks tend to be more brutal in the aftermath of an attack by bandit gangs. The bandit community, which is believed to be responsible for most of the incidents, is nomadic and as indigent as the refugee community. Some of the attackers are other, male, refugees, but the identities of the rapists are generally unknown since they are seldom caught. 226/

299. Women may also be exploited and manipulated through offers of protection in exchange for sexual favours. Women with children are very vulnerable to this kind of manipulation. There have been reported cases of children being held as ransom in exchange for the mother's sexual services. Absence of sufficient legal documentation compounds the problem for refugee women in this regard. When the procedures for securing the proper documentation are not effective or the papers remain in the custody of the male head of the household, an abandoned woman, or a woman without documentation may face great difficulty in proving that she is legally resident in the country of asylum. The absence of effective mechanisms of documentation leaves the woman refugee vulnerable to sexual and other exploitation.

300. Forced prostitution of refugee women, especially if they are not accompanied by an adult male, is a prevalent problem. Cases of minors being sold into prostitution have been reported in many countries with refugee populations. The abuse of young refugee girls for sexual purposes has been documented in recent years as a growing phenomenon.

301. Lack of access to health care and food is one of the main problems faced by refugee women and internally displaced women. Several countries have used food as a weapon, impeding the assistance efforts of international humanitarian groups. In Angola, both Government and rebel troops have deliberately starved displaced persons and planted mines in otherwise arable land. Similar strategies in Ethiopia, Mozambique, and the Sudan have lead to the death of hundreds of thousands of refugees and displaced persons often predominantly women and children. Discriminatory practices in the distribution of food and other supplies, and especially, in the provision of health services, are a widespread problem requiring systemic revision.

302. Internally displaced women may be more vulnerable to abuse than refugee women because the Government that caused the displacement is the same Government that is primarily responsible for their safety and access to services. There is no international agency with an explicit mandate to help internally displaced persons, although the International Committee of the Red Cross, as well as some non-governmental organizations, do actively intervene on their behalf.

303. Increasingly, the United Nations High Commissioner for Refugees has also been involved with the situation of internally displaced persons. While UNHCR has no general competence for internally displaced persons, the organization has frequently been specifically requested by the Secretary-General or the competent principal organs of the United Nations to intervene on behalf of internally displaced persons. UNHCR involvement with the internally displaced has often been in the context of the voluntary repatriation of refugees, where return movements and rehabilitation and reintegration programmes have included both returning refugees and displaced persons in circumstances where it is neither reasonable nor feasible to treat the two categories differently.

304. Women are also subject to persecution arising out of discriminatory gender-specific norms and customs. Amnesty International has reported the case of a woman being flogged in public because she was found wearing lipstick under her veil. Women are also flogged or persecuted in other ways for adultery, and there are documented cases of girls killed for losing their virginity. 227/ Persecution as a result of transgressing social mores is not specifically referred to in the definition of persecution contained in the Convention relating to the Status of Refugees. The difficulty of talking about traumatic experiences, combined with the non-inclusion of gender-specific persecution in the Convention, creates special problems for such women trying to make a case for refugee status protection to the authorities. 228/

(c) Legal standards

305. Both international law and the national law of asylum countries govern the protection of refugee women. The basic international instrument for the protection of refugees is the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. The United Nations High Commissioner for Refugees is charged with providing international protection to refugees and with seeking durable solutions to their problems. The Convention defines a refugee as a person who has a well-founded fear of persecution arising from nationality, race, religion, membership of a particular social group, or political opinion. The European Parliament in 1984 determined that women facing cruel or inhuman treatment as a result of seeming to have transgressed social mores should be considered a particular social group for purposes of determining refugee status.

306. The Executive Committee of UNHCR has acknowledged that gender can be a factor in persecution on the basis of one of the five listed categories, and moreover, that women can in certain circumstances be considered to constitute a "particular social group". The Executive Committee of the High Commissioner's Programme, in Conclusion No. 39 on Refugee Women and International Protection (1985), recognized that States, in the exercise of

their sovereignty, are free to adopt the interpretation that women asylum seekers who face harsh or inhumane treatment due to having transgressed the social mores of the society in which they live may be considered a "particular social group".

307. In addition to the 1951 Convention, women refugees are also protected by all international human rights instruments and mechanisms, and in particular the Convention on the Elimination of All Forms of Discrimination against Women, the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights and, more generally, by the Universal Declaration of Human Rights. The Convention on the Rights of the Child also provides international protection for the human rights of girls.

308. National laws and policies in part determine what legal status an individual receives once she arrives in the country of asylum, where she will live and what assistance will be provided to her. It has been pointed out that assistance and protection is afforded to refugees presumptively in many developing countries, whereas extensive evidentiary hurdles need to be overcome in most industrialized countries.

309. Criminal acts of violence against refugee women are punishable under national laws. In part because of extensive international organization and non-governmental organization involvement in refugee situations, however, Governments have tended either to abdicate responsibility or to act in nominal and ineffective ways.

310. UNHCR notes that protection is at the heart of the problem faced by female refugees. The Special Rapporteur, therefore, puts forward the following steps which need to be taken in order to enhance protection from violence for these women and girls, both during flight and in the refugee camps.

(a) The security and design of refugee camps generally must be improved. Poorly lit camps, latrines at unsafe distances and lack of privacy all create tense and hostile living conditions for women.

(b) Trained female officers are vitally important at all points of the refugees' journey. Female officers should be deployed at border checkpoints and detention centres, as well as in the refugee camps. Women refugees, particularly those travelling alone, should not be left in custody without a female officer present.

(c) Women and girls need greater access to medical services and female doctors and nurses. Not only are women the main health care providers for other members of their families, but creating better access to health care will also help identify protection problems.

(d) Participation by refugee women in the organizational structures of the refugee camps has been an effective means of enhancing coping processes, promoting self-sufficiency and promoting protection. Women should be involved in food and supply distribution efforts, in the provision of health care services and in decisions on repatriation. In some situations UNHCR trains refugee women to act as counsellors in the handling of other rape victims. Additionally, programmes to teach income-generating skills should be implemented. Refugee women who have turned to prostitution note that other income-generating vocations are not open to them.

(e) All States should actively investigate and prosecute all Government and military personnel who are reported to have abused, either through physical or psychological duress, women and children refugees. State's indifference to the actions of their agents only perpetuates the imbalance already inherent in the refugee situation.

(f) An agency similar in purpose to the UNHCR should be established for the protection of internally displaced people.

(g) The inclusion of gender-defined social groups should be recognized as falling within the definition of a "particular social group" as a legitimate group for purposes of establishing persecution.

(h) Refugee women and girls should be allowed to exercise choice as to where they will remain. There should be efficient procedures by which a woman feeling threatened in a given camp can be moved to a safer camp. Women and girl refugees should also be given a choice in the decision to repatriate or move to a second asylum country.

311. There is no international instrument specifically designed to address the needs of internally displaced persons. However, it should be emphasized that internally displaced women can avail themselves of the protections guaranteed in the international human rights instruments mentioned above. International humanitarian law, namely the four Geneva Conventions of 1949 and the two Additional Protocols thereto of 1966, often also apply to the case of internally displaced persons since they provide legal protection in times of conflict or war.

312. Refugees may live for years, even lifetimes, away from their homes. The upheaval and constant uncertainty that invades their existence is made worse in the case of women and girls by the fact that, by virtue of their gender, they are often uniquely subject to highly traumatic sexual and violent abuse. States facing armed conflict within their borders must pay special attention to the particular needs of internally displaced women and girls. States who host refugee women and girls must extend to them non-discriminatory and vigilant protection.

313. The issue of violence against indigenous women and women who belong to a minority has emerged in many discussions at the national and international levels. These women are often subject to double discrimination as indigenous people or as belonging to minorities, as well as being women. Special programmes should be devised to assist these women in challenging this dual-edged violence which affects their lives.

V. CONCLUSIONS AND PRELIMINARY RECOMMENDATIONS

314. The Special Rapporteur has intended in this first report to provide a general overview of the issues relating to violence against women, including its causes and consequences. Subsequent reports will deal more specifically with the areas of violence in the family, violence in the community and violence by the State. These reports will contain detailed recommendations with regard to eliminating violence against women in these spheres.

315. As a preliminary measure at the national level, however, States could be called upon to meet their responsibilities contained in the Declaration on the Elimination of Violence against Women. More specifically, States should be called upon:

(a) To condemn violence against women and not invoke custom, tradition or religion to avoid their obligations to eliminate such violence;

(b) To ratify the Convention on the Elimination of All Forms of Discrimination against Women without reservation;

(c) To formulate national plans of action to combat violence against women;

(d) To initiate strategies to develop legal and administrative mechanisms to ensure effective justice for women victims of violence;

(e) To ensure the provision of specialized assistance for the support and rehabilitation of women victims of violence;

(f) To train and sensitize judicial and police officials with regard to issues concerning violence against women;

(g) To reform educational curricula so as to instil values which will prevent violence against women;

(h) To promote research with regard to the issues concerning violence against women;

(i) To ensure proper reporting of the problem of violence against women to international human rights mechanisms.

316. At the international level, the Special Rapporteur reiterates the call contained in the Vienna Declaration and Programme of Action to incorporate human rights and the equal status of women into the mainstream of United Nations action in the field of human rights and requests the Commission on Human Rights to make available the present report to the Fourth World Conference on Women, to be held in Beijing in 1995.

317. Finally, the Special Rapporteur encourages the formulation of an optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women allowing for an individual right of petition once local remedies are exhausted. This will ensure that women victims of violence will have a final recourse under an international human rights instrument to have their rights established and vindicated.

Notes

1/ The Special Rapporteur would like to thank Ms. Tej Thapa, Ms. Natasha Balendra and Ms. Mala Dharmananda for their research assistance in the preparation of this report.

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17/ See Laura Moghaizel, "The Arab and the Mediterranean world: Legislation towards crimes of honour" in M. Schuler ed., Empowerment and the Law: Strategies of Third World Women, Washington D.C., OEF, 1986.

18/ See S. Brownmiller, op. cit.

19/ See S. Brownmiller op. cit.; also G. Lerner, op. cit.

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41/ See Dorothy Q. Thomas and Michele E. Beasley, op. cit.

42/ Rebecca J. Cook, op. cit., p. 166.

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67/ See Confronting Violence ..., op. cit., p. 26.

68/ L. Heise and J. R. Chapman "Reflections on a movement: The U.S battle against woman abuse", in M. Schuler, Freedom from Violence, op. cit.

69/ Crimes Act 1990 (NSW) Part XVA; De Facto Relationships Act 1959 (Tas) section 106; Domestic Violence Ordinance 1986 (ACT); Justices Amendment Act (No. 2) 1988 (NT) sections. 99-100.

70/ Australia, Family Law Act, 1975 sections. 114, 70C; Hong Kong, Domestic Violence Order, 1986; Jamaica, Matrimonial Causes Act 1989, section 10; United Kingdom, Matrimonial Homes Act, 1983, Domestic Proceedings and Magistrates Court Act, 1978, etc.

71/ See "Developments in the law - Legal responses to domestic violence", 106 Harvard Law Review, 1993, p. 1531.

72/ Sheelagh Srewert, "Working the system: Sensitizing the police to the plight of women", in M. Schuler, Freedom from Violence, op. cit.

73/ Z. Eisikovts and J. Edleson, Intervening with Men who Batter: A Critical Review of the Literature. Social Sciences Review, 1989.

74/ N. Gonzalez, "A new concept of mediation: An interdisciplinary approach to domestic violence", in M. Schuler, op. cit.

75/ See Confronting Violence. A Manual for Commonwealth Action, Women and Development Programme, Human Resource Development Group, Commonwealth Secretariat, London, June 1992, p. 43.

76/ Ibid.

77/ Ibid.

78/ Ibid.

79/ F. Hosken, "General and sexual mutilation of females", in WIN News, Lexington, January 1994.

80/ Final report of the Special Rapporteur on traditional practices affecting the health of women and children, Mrs. Halima Embarek Warzazi, (E/CN/.4/Sub.2/1991/6), para. 11.

81/ World Health Organization, Division of Family Health, Female Genital Mutilation - the Practice, Geneva, WHO, July 1994.

82/ E/CN.4/Sub.2/1991/6. para. 13.

83/ Ibid.

84/ Roxanne Carillo, op. cit. (note 32).

85/ WHO, 1985, Offset Publication No. 90, Women, Health and Development.

86/ APDC, op. cit. (note 53).

87/ UNICEF South Asia Regional Office, Kathmandu, Working Papers presented to the Second United Nations Regional Seminar on Harmful Traditional Practices affecting the Health of Women and Children, Colombo, 1994 (E/CN.4/Sub.2/1994/10).

88/ Ibid.

89/ Criminal law (Amendment) Act 1983 - amending section 30YB Penal Code 1860.

90/ WHO, 1985, op. cit.

91/ Final report of the Special Rapporteur on traditional practices ..., op. cit. (note 80).

92/ The Commission of Sati (Prevention) Act of 1987, New Delhi.

93/ Human Rights Watch Women's Project, "Matter of power - State control of women's virginity in Turkey", June 1994.

94/ See Kate Millet, Politics, New York, Virago Press; and Susan Brownmiller, Against Our Will, London, Penguin.

95/ Catherine Mackinnon, "Sexuality, pornography, and method, Pleasure under patriarchy", in Ethnic 1989, vol. 99, No. 2.

96/ Token Gestures: Women's Human Rights and UN Reporting: The UN Special Rapporteur on Torture, International Human Rights Law Group, Washington, D.C., June 1993.

97/ Human Rights Watch Women's Rights Project, Criminal Justice, Violence against Women in Brazil, New York, 1991.

98/ See I. Fernandez, "Mobilizing on all fronts: A comprehensive strategy to end violence against women", in M. Schuler, Freedom from Violence, Women, Law and Development, OEF International, 1992.

99/ See Confronting Violence: A Manual for Commonwealth Action, Women and Development Programme, Human Resource Development Group, Commonwealth Secretariat, London, June 1992.

100/ See, for example, Elizabeth Shrader Cox, "Developing strategies: Efforts to eradicate violence against women", in M. Schuler, Freedom From Violence, Women, Law and Development, OEF International, 1992.

101/ See I. Fernandez, op. cit.

102/ South Australia Criminal Law Consolidation Act, 1976, section 3.

103/ Victoria, Crimes Act 1958, section 2A(1); NSW, Crimes Act 1900, section 61A; New Zealand, Crimes Act 1961, section 128.

104/ Crimes Act 1900 (New South Wales) section 61A(4); Crimes Act 1958 (Victoria) section 62(2); Criminal Code (Queensland) section 347; Criminal Code (Tasmania) section 185; Criminal Code (Canada) section 246.8; Crimes Act 1961 (New Zealand) section 124(4). Scotland: HM Advocate v Duffy (1982) SCCR 182; Stallard v HM Advocate (1989) SCCR 248. Wales; R v R (1991) 141 NLJ 383.

105/ Confronting Violence: A Manual for Commonwealth Action, Commonwealth Secretariat, 1987.

106/ Criminal Law (Amendment) Act 1983.

107/ Crimes Act 1961 section 129A (NA).

108/ Crimes Act 1900 section 65A (NSW).

109/ A. Jahagirt and H. Jilani, The Hudood Ordinance: A Divine Sanction, Lahore, Rhodas Book, 1990.

110/ Criminal Code section 246.4.

111/ Criminal Code section 246.

112/ Crimes Act 1900 section 409B.

113/ Billam Case (1986) 1 All ER 985.

114/ New Zealand, Victims of Offences Act 1987 section 8.

115/ Howard League Working Party, Unlawful Sex, Waterlow, 1985, pp. 104-106.

116/ See I. Fernandez, "Mobilizing on all fronts: A comprehensive strategy to end violence against women", M. Schuler, Freedom from Violence, Women, Law and Development, OEF International, 1992.

117/ See Confronting Violence: A Manual for Commonwealth Action, Commonwealth Secretariat, June 1992, p.110.

118/ Measures to Combat Sexual Harassment at the Workplace: Action Taken in the Member States of the European Community, European Parliament, Directorate General for Research, Division for Budgetary and Cultural Affairs and Comparative Law, Luxembourg, January 1994, p. 23.

119/ Indian Penal Code, section 509; see also Southern Nigeria, Penal Code, section 360; Botswana, Penal Code, section 143; Singapore, Penal Code, sections 354 and 354A.

120/ Delhi, Prohibition of Eve Teasing Bill, reported in Women's International Network News, Summer, vol. 0, No. 3, 1984.

121/ For example, Strathclyde Regional Council v Porcelli (1986) IRLR 134; Wileman v Milenic Engineering Ltd (1988) IRLR 144.

122/ Title VII of the 1964 Civil Rights Act, article 703.

123/ Barnes v Costle.

124/ Henison v City of Dundee, 1982.

125/ Bundy v Jackson, 1982.

126/ For example, Employment Protection (Consolidation) Act (UK), 1978.

127/ Law No. 2112 on termination of employment dated 11 March 1920, as amended on 17 October 1953.

128/ Cass, Plen, Ass. 13/87 Jur. Trib. 36; 78 (Decision 13/87).

129/ Article 40(2) of Order in Council No. 49,408; Regime Juridico do Contrato Individual de Trabalho, Order in Council No. 49,408 of 24 November 1969.

130/ Measures to Combat Sexual Harassment at the Workplace: Action Taken in the Member States of the European Community, European Parliament, Directorate General for Research, Division for Budgetary and Cultural Affairs and Comparative Law, Luxembourg, January 1994, pp. 24-25.

131/ See Confronting Violence. A Manual for Commonwealth Action, Commonwealth Secretariat, June 1992, p. 113.

132/ Ibid.

133/ Measures to Combat Sexual Harassment at the Workplace: Action Taken in the Member States of the European Community, European Parliament, Directorate General for Research, Division for Budgetary and Cultural Affairs and Comparative Law, Luxembourg, January 1994, p.56.

134/ See Confronting Violence, op. cit., p. 114.

135/ Ibid.

136/ At the First and Second World Whores Conference (Amsterdam 1986 and Brussels 1987, respectively), the concerns of prostitutes in developed countries were distinctly different from those of feminist organizations representing third world prostitutes. The Third World groups were concerned with issues of exploitation and systemic power imbalances; the Western groups were concerned with issues of personal autonomy and morality.

137/ Newsweek, 29 June 1992.

138/ This does not apply to women held in debt bondage or other kinds of forced prostitution.

139/ United Nations, Economic and Social Council for Asia and the Pacific, 1986. See also Heishoo Shin, "Women's sexual services and economic development", October 1991, Ph.D thesis, unpublished.

140/ One writer has estimated that sex is the most valuable subsector of the annual US$ 3 billion tourist industry in Thailand. See, Steven Schlosstein, Asia's New Little Dragons, Chicago, Contemporary Books, 1991. While writers such as Schlosstein, Enloe and Truong have emphasized the growth of tourism as a chief instigator of the increase in the CSW population worldwide, it should be noted that the local demand for prostitutes in most countries is greater than the foreign demand. The sex tourist generates more income than the local commercial sex client per CSW contact, but the volume in client numbers is greater in the local population. See, A Modern Form of Slavery, Asia Watch.

Cynthia Enloe in Does Khaki Become You? (London, Pandora Books, 1988) points to a direct correlation between an increase in military presence in a population and a dramatic rise in prostitution in the same population. Military bases notoriously incorporate prostitution into the "rest and recreation" culture for soldiers. The role of Governments in helping military bases procure prostitutes is not an innocent one.

141/ See, "In pursuit of an illusion: Thai women in Europe", Women's Information Centre/Foundation for Women, Bangkok, 1988, No. 96.

142/ The abuse of prostitutes while in detention is in direct contravention of the Minimum Standards on the Treatment of Prisoners.

143/ Stigma does not necessarily attach to prostitution everywhere. Certain African countries are known to have very liberal postures towards prostitution: women move in and out of prostitution in an autonomous manner, with the full knowledge of their families and communities. There are communities in Nepal and India which condone prostitution as an income-generating activity to such an extent that they have developed well-established rituals to reconstitute the virginity of a prostitute when she retires and gets married. The prostitute, at the end of the ceremonial rites, regains not just her virginity but communal respect.

144/ Newsweek, 29 June 1992.

145/ Thanh-Dam Truong, Sex, Money and Prostitution in South East Asia, London, Zed Books, 1990.

146/ The WHO Guidelines expressly require consent from a person before any medical intrusion is made upon the person's body.

147/ Brothel owners are known to sell a woman's virginity several times over. The prices clients pay for a virgin is usually very high and the misrepresentation is motivated by lucrative concerns. A Modern Form of Slavery: Trafficking of Burmese Women and Girls into Brothels in Thailand, New York, Human Rights Watch, 1993.

148/ From Thailand to the Netherlands, police and other officials have claimed that incidents of rape would increase if men could not satisfy their needs through prostitutes. Under this reckoning (for which there appears to be absolutely no proof), the chaste woman should be grateful that her husband visits prostitutes and thus does not rape her or other chaste women.

149/ Khin Titisa, Providence and Prostitution, International Reports: Women and Society Series, London, 1990.

150/ A Modern Form of Slavery, op. cit. (note 147). Women and girls are also trafficked from China and other parts of the world into Thailand. While recent focus with regard to trafficking has been on Thailand, the Philippines and the Republic of Korea, trafficking in women is not confined to these countries. It is estimated that 200,000 women have been trafficked from Nepal to India. Women are trafficked from Bangladesh into Pakistan, from South Asia and South-East Asia into Europe and from South America into Europe and North America.

151/ If a prostitute becomes pregnant while in the brothel, she must either have a forced (and in Thailand, illegal) abortion or, if she carries the child to term, the child is usually sold by the brothel owner without the woman's consent or knowledge.

152/ Some of the abuses cited in this report are specific to the particularly oppressive regime in Myanmar. Asia Watch notes that even when sex workers from Myanmar are deported back to that country, the Government of Myanmar has been known to refuse re-entry for those who are not ethnically Burmese, and that the Government of Thailand has been complicitous in this explicitly racist practice. The Government of Myanmar also actively prosecutes women who were trafficked against their will upon re-entry into Myanmar.

153/ In Peru, for example, where prostitution is legal but heavily regulated, most prostitutes do not register as required, preferring to work illegally in spite of the fact that they are then subject to greater police harassment.

154/ Report of the Special Rapporteur on the sale of children, child prostitution and pornography to the General Assembly at its forty-ninth session.

155/ Patricia Weinert, Foreign Female Domestic Workers: Help Wanted, Geneva, ILO, March 1991.

156/ Advancement of women: violence against migrant women workers, Report of the Secretary-General, (A/49/354).

157/ Eelens and Speckman, International Migration Review, XXIV, No. 2, Summer 1990, p. 229.

158/ See Jan Bremen, Of Peasants, Migrants and Paupers, Oxford, Clarendon Press, 1985.

159/ See Weinert, op. cit.

160/ See A/49/354 (note 156).

161/ Punishing the Victim, Middle East Watch, August 1992.

162/ Ibid.

163/ Ibid. It should be noted that lack of adequate medical care is an acute problem among migrant women, especially those facing abuse.

164/ Ibid.

165/ The pernicious role that these unregulated recruitment agencies play deserves mention. Women recruited through these agencies are charged an exorbitant recruitment fee, with a debt interest of 15 to 30 per cent. Women who were under the impression that they were hired for domestic or factory help have realized too late that they were being trafficked for prostitution instead. The base contracts which govern a migrant woman's working conditions are negotiated by the recruitment agencies; the woman herself is left out of the negotiating process and remains in the dark as to the terms she has signed onto.

166/ Such administrative organizations could be charged with developing a standardized contract which must be used by all recruitment agencies.

167/ A tax of 1 per cent on all remittances repatriated by migrant women has been recommended by the Sri Lankan Women's Chamber of Industry and Commerce to create a fund for the purpose of helping migrant women who seek help while abroad.

168/ The following ILO conventions and standards are particularly relevant in this context: Forty Hour Week Convention and Reduction of Hours of Work Recommendation (limiting the hours of work to 40 per week, and requiring that overtime be compensated); Protection of Wages Convention and Recommendation (requiring contracts with specified wages and other terms); Weekly Rest (Industry) Convention (requiring at least one rest day per week, with the express provision that such rest day should coincide with the rest day observed by other workers). The other international instruments which should be mobilized to provide protection for migrant women are the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

169/ C. Mackinnon, "Pornography, civil rights and speech", in 20 Harvard Civil Rights-Civil Liberties Law Review 1985, pp. 1-70.

170/ Ibid.

171/ See, for instance, D. Zillman, Connections Between Sex and Aggression, Donnerstein and Berkowitz, 1984; "Reactions in aggressive erotic films as a factor of violence against women", Social Psychology, 1981, pp. 710-724. Malmuth and Check, "The effects of mass media exposure on acceptance of violence against women: A field experiment", J. Research Personality, 1981, 15, pp. 436-446.

172/ The Williams Committee on Obscenity and Film Censorship, London, 1979, p. 103.

173/ C. Mackinnon, op. cit.

174/ Horne & McIntosh v. Press Clough Joint Venture and Metals and Engineering Workers Union, Equal Opportunity Tribunal, Western Australia, 1994.

175/ See report of the Working Group on Contemporary Forms of Slavery on its nineteenth session (E/CN.4/Sub.2/1994/33) and interim report of the Special Rapporteur on the sale of children, child prostitution and child pornography to the General Assembly at its forty-ninth session (A/49/478).

176/ Military abuse of power is unchecked in large part because the mandate the military is given in national security crises is itself very broad. The rise in recent years of "disappearances" as a military strategy against allegedly subversive persons is a compelling example of the untethered powers allowed military forces.

177/ Torture, 1:92, vol. 2, 1992, IRTC, Copenhagen.

178/ Double Jeopardy: Police Abuse of Women in Pakistan, Asia Watch, Women's Rights Project, New York, 1992, p. 44.

179/ Disappearances and Political Killings, London, Amnesty International, 1994.

180/ A. Jahangir and H. Jilani, The Hudood Ordinances: A Divine Sanction, Lahore, Rhotas Books, 1990.

181/ Double Jeopardy, op. cit. Amnesty International and the U.S. State Department country reports both confirm regular torture and rape of women detainees in Pakistan.

182/ See Jahangir and Jilani, op. cit. Men are subject to trial for violation of the Hudood Ordinances also, but the larger percentage of those charged are women.

183/ Double Jeopardy ..., op. cit. Police in Pakistan notoriously refuse to register complaints of rape.

184/ Cited in India: Torture, Rape and Deaths in Custody, London, Amnesty International, 1992.

185/ A discussion of custodial violence against women must address the fact that abuse of women by police occurs in non-custodial settings also. The psychological and physical conditions are such, however, that they are tantamount to official custody.

186/ A Modern Form of Slavery, op. cit. (see note 147).

187/ See Middle East Watch Womens Rights Project, Punishing the Victim: Rape and Mistreatment of Asian Maids in Kuwait, New York, August 1992.

188/ Dorothy Q. Thomas and Regan E. Ralph, "Rape in war, challenging the tradition of impunity", in SAIS Review, 1994, p. 81.

189/ Report of the Secretary-General pursuant to paragraph 2 of Security Council resolution 808 (1993) (S/25704), paragraph 48.

190/ Letter dated 24 May 1994 from the Secretary-General to the President of the Security Council and annex (Final report of the Commission of Experts established pursuant to Security Council resolution 780 (1992)) (S/1994/674).

191/ United Nations/OAS International Civilian Mission in Haiti, Press release, Port-au-Prince, 21 March 1994. The High Commissioner for Human Rights and the Special Rapporteur have received a petition from the Catholic Women's Community of Germany (Katholische Frauengemeinschaft Deutschlands) containing approximately 2,000 signatures against the practice of systematic rape of women and children in Haiti. The signatories also demand the documentation of rapes in Haiti, the prosecution of perpetrators and an end to impunity, and protection and assistance for women victims of rape, reiteration of rape as a war crime in international agreements, the recognition of gender-specific reasons such as rape, as a basis for the right to seek asylum, the establishment of an international criminal court and the recognition of rape as an international crime in an international criminal code.

192/ African Rights, Rwanda: Death, Despair and Defiance, London, 1994.

193/ Ruth Seifert, War and Rape: Analytical Approaches, Women's International League for Peace and Freedom, Switzerland, April 1993, p. 12. See also Dorothy Q. Thomas and Regan E. Ralph, "Rape ..." loc. cit., p. 81.

194/ Asia Watch, The Human Rights Crisis in Kashmir: A Pattern of Impunity, Human Rights Watch, New York, 1993, p. 103.

195/ Human Rights Watch/Americas, Untold Terror: Violence against Women in Peru's Armed Conflict, New York, December 1992, p. 2.

196/ Asia Watch, Myanmar: Rape, Forced Labour and Religious Persecution in Northern Araken, New York, Human Rights Watch, 1992.

197/ Ruth Seifert, 1993, op. cit., p. 2.

198/ Human Rights Watch/Americas, op. cit.

199/ Ibid., p. 18.

200/ Ruth Seifert, "Mass rapes: Their logic in Bosnia-Herzegovina and elsewhere", in Women's Studies International Forum, Spring 1995 (forthcoming), p. 2.

201/ S/1994/674, paragraph 249.

202/ Ruth Seifert (1995), op. cit., p. 7.

203/ Various sources, including Asia Watch, The Crisis in Kashmir, A Pattern of Impunity, New York, Human Rights Watch, 1993.

204/ Dorothy Q. Thomas, op. cit., p. 89.

205/ Rape and abuse of women in the territory of the former Yugoslavia, Report of the Secretary-General (E/CN.4/1994/5), 30 June 1993.

206/ E/CN.4/1993/50, para. 260.

207/ Human Rights Watch/Americas, op. cit. (note 195).

208/ J. Vickers, Women and War, London, Zed Books, 1993, p. 21.

209/ For a detailed study see Karen Parker and Jennifer F. Chew "Compensation for Japan's WW II war rape victims", in Hastings International and Comparative Review, Vol. 17, No.3, Spring 1994.

210/ Paper prepared by the non-governmental organization Korean Women Drafted for Military Sexual Slavery by Japan, Seoul, August 1994.

211/ 1928 PCIJ, p. 29.

212/ E/CN.4/Sub.2/1990/10, para. 33.

213/ See Seeking Refuge, Finding Terror: Widespread Rape of Somali Women in North Eastern Kenya, Africa Watch, 1993; also Susan Forbes Martin, Refugee Women, Women and World Development Series, London, Zed Books, 1991. Although the Special Rapporteur refers to refugee women, it should be pointed out that the nature and extent of the abuse faced by refugee women is not always distinct from the abuse faced by refugee girls. Accounts of the rape of 4-year-old girls are as common as accounts of the rape of 40-year-old women.

214/ Malnutrition is the principal cause of mortality in refugee camps.

215/ Richard Mollica and Linda Son, "Cultural dimensions in treatment and evaluation of sexual trauma: An overview", in Psychiatric Clinics of North America, 1989, 12(2):363-379.

216/ Susan Forbes Martin, Refugee Women, op. cit. Child and spouse abandonment by men in refugee camps is not an infrequent phenomenon.

217/ Ibid. The author cites, for example, the Afghan refugee camps in Afghanistan where the use of purdah has been intensified, affecting even those groups of Afghan women who did not practise purdah while in Afghanistan.

218/ One study notes that sexual torture can consist of, inter alia, "rape of women by specially trained dogs, use of electric currents upon the sexual organs ... the insertion of penis-shaped objects into the body-openings (these can be made of metal or other materials to which an electrical current is later connected, are often grotesquely large and cause subsequent physical damage)". From Inger Agger, Journal of Traumatic Stress, vol. 2, No. 3, 1989.

The verdict is still out on the issue of whether rape trauma syndrome (RTS) should be accepted as evidence in rape trials. Whether or not this debate is ever resolved, groups concerned with refugee women should watch for symptoms that are associated with RTS in assessing the needs of refugee women.

219/ See Seeking Refuge ..., op. cit. (note 213).

220/ "Note on certain aspects of sexual violence against refugee women" (A/AC.96/822), Executive Committee of the High Commissioner's Programme, 12 October 1993.

221/ One Somali woman described the war in her country: "The war in Somalia is an anarchist war. It is a war on the women. Any woman between the ages of 18 and 40 is not safe from being forcibly removed to the army camps to be raped and violated. And that's only the beginning. If her husband finds out, he kills her for the shame of it all; if they know that he has found out, they kill him, too; if he goes into hiding instead, and she won't tell where he is, they kill her." Quoted in Martin, Refugee Women, op. cit., p. 24

222/ Martin, Refugee Women, op. cit.

223/ Roberta Aichison, in Cultural Survival Quarterly, vol. 8, No. 2, Summer 1984.

224/ "Note on certain aspects of sexual violence ...", op. cit. (note 220)

225/ UNHCR, Guidelines for the Protection of Refugee Women, 1991.

226/ Seeking Refuge, op. cit.

227/ The practice of sati in India can be seen as a form of gender-specific persecution, arising from a combination of communal conventions and ineffective State intervention.

228/ The existing bank of jurisprudence on the meaning of persecution includes rape but does not include, for example, infanticide, bride-burning, sati, forced marriage, forced sterilization, forced abortions or domestic violence.
